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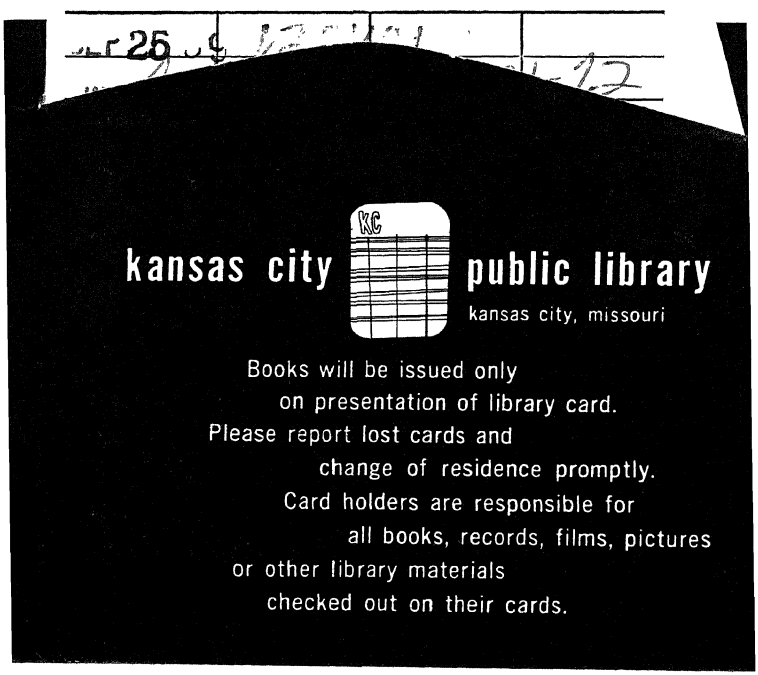

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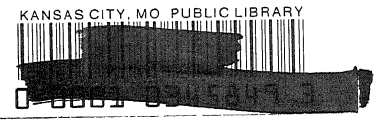

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With love

to my brother - Myron

who has long urged me to tell this story

NOTE AND ACKNOWLEDGMENT

Only a century ago the belief was widespread that insanity was caused by sin and its cure was repentance. The view was slow to die out; but scientists were already at work trying to get at the nature of the mind, the brain, and individual behavior; and this is the story, how that conflict, of science and superstition, reached a nodal point, in this country, in 1846.

Then there occurred, in one of our small American villages, a famous test case, the first acknowledged defense of murder on grounds of insanity; and thereafter, man's view of the mind, the brain, the soul itself, in health and disease, would never again be the same.

The trial records of this case totalled upwards of a million words, which, of course, have been enormously distilled and selected. The resources of the New York Public Library on William H. Seward, scores of volumes, have been absorbed, so as to recover the outlines of Seward's career and the small details of his personality. However dramatized the material may seem to be, the story is true.

Bibliographical and other help have been given me by Albert S. Frampton of New York; Warden Robert E. Murphy of Auburn Prison; John Bass, and Mrs. Betty Lewis, curator of the new Seward Museum, of Auburn.

But most of all, thanks to my wife for everything, in the only way she can be thanked—with love.

E. C.

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PART ONE

A Village Lawyer Takes A Case

CHAPTER ONE

The Man in the Dungeon

It was the immortal hour in American life—the mid-1800s, before the advent of the Civil War. Men and women were launched on a sea of reforms and they were making an inspiring history. They believed that what they were doing would produce an enduring imprint on the human consciousness thereafter. Words like "freedom," "mankind," "progress," were being given life. Causes were many and everywhere. Individuals believed that their efforts would prolong their personal identities long after their death. "Faith" was a word as powerful as the words "love" or "truth." A man with "faith" was a man of honesty and greatness and integrity, and a faithless one was doomed to go to some perdition of extinction.

America was growing and it was this attitude of new birth that was its essence.

It was in such an hour as this and in such a climate that a man named William H. Seward, destined to become Abraham Lincoln's Secretary of State, found himself, or plunged himself—as a man of faith—into one of the strangest and most meaningful purposes of that time.

In the 1840s they called the central part of New York State "the storm country." Cold Lake Ontario lay to the north, and the Canadian blasts drove across the lake and settled in the region where a half-dozen lakes stretched, taut and frozen, like fingers

of a hand, on the countryside. Snow began falling late in November and there might be snow every day or so through March. The drifts were high and they could reach up to window levels, and in some rural spots to the eaves. The towns were vying for growth and commerce, and one of the larger villages, in 1846, was Auburn. It was then twice as big as Rochester to the west, and about the same size as Syracuse to the east. There were lakes all about Auburn, and close to the village was long lean Owasco Lake, a frozen mirror reflecting whatever colors the sky yielded.

Auburn was an antislavery and a suffragist center. Politics was a virtual industry there, the Whig Party being strong. And in the center of the town lay the great gray stark structure known as Auburn Prison. Much of the town's life radiated about the prison, and from time to time events at the prison erupted and flowed through the villagers' lives.

The town was a whirl of hills which, one day early in February of this year, were deep with snow. It was two feet high along Genesee Street, the main street named after the Genesee Indians; and from the Exchange Building, where law offices and real estate men were located, the village looked harsh and cold, like a day for little business in the stores, a day to stay inside by the stoves.

On that morning, at eight thirty, the most prominent man in the village, William H. Seward, the lawyer, left his home on South Street, and trudged over the snow-covered slab sidewalks two hundred yards to his office in the newly built Exchange Building. There he was partner with David Wright, Christopher Morgan and Samuel Blatchford in the village's most flourishing law partnership. These were distinguished counsel, whose identities were known in Albany, New York and Washington.

When Seward arrived his clerk, Charles Parsons, greeted him. "Good morning, Governor."

Actually he was no longer Governor. But he had already been Governor of New York twice, his second administration ending in 1842. For the last three years he had been practicing law privately back in Auburn. But the title "Governor" clung to him as a token of respect, and no one called him otherwise, save Mrs. Seward who often called him "Henry" or, if people were about, "Mr. Seward."

The clerk held out a letter and said, "A prison guard brought this in first thing this morning. Said give it to you."

"Thank you, Charles." The clerk was one of several apprentice lawyers, who came from all over the region to learn law in Seward's offices.

Seward placed the note, which was inside an envelope, on his desk and didn't read it at once.

There were newspapers to look through swiftly, weeklies and the New York papers. Seward, a leader of the Whig Party, read his own recent criticism of the Democratic President Polk over the Mexican issue. The Whigs didn't want a war with Mexico that might strengthen the proslavery force, and Polk was drifting toward such a war. Seward noticed the latest on the Oregon question—where there was also a threat of war—this with England.

Then he turned to his own affairs, an issue or two before the Supreme Court, a patent case, some small affairs about the village, which he delegated to his clerks.

Blatchford came in. Morgan and Wright entered later and went to their desks. The office hummed in the usual way, the cold entering the door each time it opened, and the large stove fuming away all full of coal and heat.

The clerk reminded the Governor of the note from the prison. He read it—a letter from a convict:

> Dear Governor Seward:
>
> I am under indictment for murder. I did murder James Gordon, but I had a reason for it. I don't have no money. I got no friends in this part. If someone dont hear my side of the story the court is going to hang me. I go to trial in two days. Governor Seward, I am please begging you to come see me and give me a chance.
>
> Yours respectfully,
> Henry G. Wyatt

Anything having to do with the prison sparked interest in lawyer Seward. When he had been Governor the problems of penology had fascinated him. Moreover, he didn't like what had come to be known as "the Auburn system" of imprisonment, a harsh system then spreading to most prisons in the nation.

He studied the note—such a personal appeal it was impossible not to do something about it.

The Governor decided to see the man at once. He reached for his black overcoat, his black hat—he dressed in a rich black most of the time—and he carefully put on boots, with leggings that rose to the knees.

"I'll be back soon, Parsons," he said.

Seward wasn't a handsome man. He wasn't always a graceful man either, and he hadn't an orator's smooth voice. People said his voice grated a bit. And, in spite of the expensive clothes he wore, he was sometimes a little careless of his physical appearance. But when the slight, middle-height, nervously energetic Seward stepped into the village streets, walking with power and an inner certainty, slogging through the drifts like his fellow townsmen, Auburnians leaped to life with alacrity and a respectful, "Good morning—*Governor.*"

He strolled from his office in the Exchange Building down snow-covered State Street hill to the front entrance of the prison —a huge, gray-walled structure, situated just about in the center of the village. It gave the commercial section a somber character, and it cast a kind of shadow over the lives of the Auburnians. Some said the long gray walls, stretching for a quarter of a mile, took away from the natural beauty of the place; and that real estate in the neighborhood of the prison never would be too valuable.

The prison covered an area of five hundred thousand square feet. A branch of the Owasco River outlet passed along the side and provided water power to the various plants and workshops. A wall four feet thick, ranging in height from twelve to thirty-five feet, passed rectangularly about the site for three thousand feet. The buildings were laid out in a design of L-shaped wings. In the center there was a large level yard. The prisoners were celled in two main wings, a north and a south, with five hundred and fifty cells on the north side and four hundred and forty-two on the south. The punishment was labor. Hard work under vigilant guards in a series of shops making harnesses, axles, clothes, tools, bricks, furniture. The prison was an industry; it was out to pay for its own upkeep. Auburn

businessmen made contracts with the prison heads for the production of goods; the labor was secured for nothing, and it was a common sight to see on the side of some place of business in the village a large painted sign, "Prison Furniture: Cheap."

Yet the presence of the prison was a source of philosophic uncertainty to Auburnians. Strange stories issued from the institution from time to time, strange stories of torture and insanity and mutiny.

Seward found Henry Wyatt on a stone floor in one of five dungeons beneath the north-wing cell block. He looked down at the manacled figure of Wyatt, who had murdered the inmate named James Gordon. He could barely make out the face of the convict in the dim lamplight. Wyatt's shackles clanked on the concrete.

The keeper told Wyatt, "Here's the Governor."

"Thank God, Governor. Thank God you came!"

"Maybe I can help . . . what is it?"

". . . Only to see, Governor, that I get a fair trial for this."

Wyatt was a white man with a dark stubble of beard. He was thin now, but before solitary he had been chunky and hard-set.

Seward stayed for an hour. He learned that Wyatt had been imprisoned for ten years on a burglary charge. But he had fallen into trouble with the convict, Gordon, who, trying to ingratiate himself, had told the prison authorities that Wyatt had murdered a man in Ohio and that out there they were looking for the murderer. Wyatt denied it, but the prison officials, trying to get an admission from him, beat him unmercifully. Then they put him into a small, dark and cold dungeon in the lower recesses of the prison. When he came out, he plunged one blade of a large pair of shears into Gordon. Wyatt reasoned that Gordon's stool-pigeon behavior, together with his lies, had got him punished and placed in solitary; it was also a threat to the other inmates. While in the dungeon he decided to kill Gordon; which was only justice, Wyatt told the lawyer.

Seward questioned him particularly about the prison punishments. Wyatt described the ball and chain and the yoke that offenders sometimes had to wear, and which he, Wyatt, had worn; also the cold shower taken in a bath to which he was confined by stocks and straps while water poured on him from a wide-nozzled

sprinkler with a fall of about two feet. This hadn't forced a confession from him for a murder he said he knew nothing of, and then he was given "the cat." The cat was a club with six strands of leather at one end, each strand about fifteen inches long. Wyatt had received seventy-five lashes across the back.

Seward asked Wyatt what he had said to his tormentors. Had he protested? Wyatt told them, "It is hard for one white man to take off his shirt to be flogged by another." He also said, "For God's sakes, kill me at once, and not kill me by piecemeal." Prison Keeper Ulysses Doubleday ignored the protests and ordered, "Put it on him as long as he can stand it." Wyatt had not cried out as the lashes fell, but had borne them in silent agony until he toppled over unconscious.

Seward listened with horrified interest. He knew, as an ex-Governor, that the terrors of imprisonment and the barbaric practices then in wide use, particularly at Auburn, could drive men to homicide. When Auburn Prison had been first occupied, in 1819, the jailers had employed the *Newgate system* of handling inmates. Newgate was a prison in Greenwich Village, named after England's Newgate Prison. The convicts were kept in groups, in large pens, without labor—criminals of all ages and types—and it spawned evil. This had been modified and developed into the present *Auburn system,* or *silent system,* which many prisons copied. The procedure isolated one prisoner from the other. They were kept in separate cells at night, and during the day they marched in a curious in-time, lock-step fashion to and from meals, workshops and cells. They must walk with downcast eyes, not speak to each other, and they could not even face each other except if they had to at work. They wore zebra-striped black and white uniforms which would quickly identify them if they tried to escape. It was an efficient method of securing a maximum amount of hard labor.

The human body couldn't withstand such strictures, Seward knew. Such discipline made men "stir crazy," and the lawyer told Wyatt, "I'll see that you get competent counsel."

But as he left the prison and considered Wyatt's crude notions of self-justification, he decided to defend the man himself.

CHAPTER TWO

Of "Lunaticks" and "Wild Beasts"

A new concept was entering the fields of medicine and psychology at that time, the idea of "moral insanity." Seward decided that Henry Wyatt was an example of this, and he meant to prove the issue. Other lawyers were flirting with this approach as they contemplated certain instances of murder, but as yet they were in a shoptalk stage.

A defense of insanity in murder cases was known, but it was exceedingly unpopular with the people. The common view here and in England, everywhere, at the time, toward murderers, was very simple: a man kills, kill him in return; for murder there is no way out but murder in return. The Mosaic law was hard and fast—thou shalt not kill—and there was no recourse in law for the slayer, but yield him in return his eye and his tooth.

Lawyers knew that actually medicine had made inroads on the nature of crime and violence: the factor of the diseased brain had been hinted at, but they resented the intrusion of scientists and medical men into their domain. Judges, too, were resentful. There had been a few fleeting attempts at insanity defenses of murder, but they had been quickly scotched, and the accused hung; and there were—in a century—a few sputtering acquittals, with the accused confined thereafter to the "madhouse"; but no acknowledged case of an insanity defense for homicide was yet recorded—either in England or the United States. No full-fledged trial of the issue, no thrashing out in court of the Dostoevskian depth of man's

behavior under the influence of infection, cranial injury, physical and social pressures.

Seward was fascinated with this whole intricate realm.

The latest stage in man's comprehension of the "lunatick" and his rights had been defined by English law long before. It stemmed from legalists Coke, Blackstone and Hale. Their definition stated that he was insane who, by reason of natural infirmity or disease, could not count to twenty, did not know his mother and father, and had no more reason or thought than a beast. The condition was determined by the "wild beast" test, which stemmed from a case that occurred in 1724. A hundred years later, in the time of Seward, it was still held to be a valid determination of insanity.

Seward doubted that such vacuity of mind ever did or ever could exist. What such a definition really meant was that, until then, insane men and women were being hung or otherwise punished for crimes whose commission was traceable to disease and to the ignorance of medicine.

Clearly the understanding of the human mind was still walking on all fours.

Obviously law and society needed a new definition of insanity, Seward believed. It was time for someone to lock horns with the "wild beast" theory of insanity. The courts of the nation and of the world required re-evaluation of the question of sanity in the light of a few recent findings. Bring the advanced physicians into court, the lawyer told himself; call in the heads of the mental hospitals, the experimentalists and the phrenologists; let them examine Wyatt and pass upon his sanity. These were new times even though judges and juries, and lawyers, too, basked in the shadow of demonology and witchcraft; even though the blight of slavery in the land held back man's creativity. Man's nature was still a mystery; the unaccountable was always occurring in human affairs; how then, could the law, with impunity, pass on guilt or innocence in so many complicated actions of men and women, which, on the surface, defied explanation? Sadism in prisons was a great and enduring evil, producing illness and insanity among inmates. Social pressure alone might be a creator of the abnormal if it was intense enough, he suspected.

He sensed these possibilities because in recent years physicians, neurologists, experimentalists, psychologists and humanitarians had been grappling with these matters: and it was time for a closer liaison between medicine and the law.

Actually Seward's decision to defend Wyatt could be traced backward in a jagged line to the recurrent attacks of insanity suffered by King George III, and to the medical controversy that broke out in England, and spread to France, as a consequence of the king's illness. In the winter of 1788–89 England was without a king. King George III was in a strait jacket part of the time, and his physicians were rowing with court politicians over how to handle the monarch. Dr. Francis Willis, an ex-clergyman who had turned to mental healing, ministered to the king by a method combining leniency and firmness, initiating what came to be known as the moral approach to insanity. But Willis had opposition, and the House of Commons held an investigation into the king's capacity. The *real* upshot was that curiosity became deeply extended into the nature of mental illness: it was clear that medical science was unable to cope with insanity. It was not yet associated with disease of the brain. Even in the minds of physicians a deranged mind was still equated with witchcraft, with demonology, with what was conceived to be the eternal evil that resides in mankind. The harsh word "lunatick" was everywhere in use, and the insane were even laughable objects. The mentally ill were housed in foul-smelling dens; they dwelt in their own excrement; and at London's great Bethlehem Hospital, called "Bedlam," the mentally diseased were used each Sunday as a circus. The Londoners, for one shilling, could look inside the cages where the madmen were held and laugh at their antics. The fee went to the wardens. That was in 1800, only forty-six years before Seward began his effort for a newer, a better, a more helpful attitude toward the mentally ill.

In many countries on the Continent, notably France, Italy and Germany, physicians were groping toward better explanations of "lunacy" and less cruel ways to handle the insane. The big break came in 1795, in France, when Dr. Phillipe Pinel called for an attitude of understanding toward the insane and got himself appointed doctor to the *Bicetre Asylum.* Within, human beings sick of

mind had been caged like beasts for twenty, thirty and forty years. Pinel struck the chains from them, treated them with decency and consideration, and reawakened their humanity. It was a great advance. Pinel had taught medicine and his countrymen the simple fact that the insane were merely sick people, diseased ones, and doctors could deal with them if they wished. Three years after Pinel went to work at the *Bicetre,* an English Quaker, William Tuke, induced the Quakers to establish a hospital at York. There he initiated humane treatment of the insane, and he got good results; and these influences spread to the United States.

In 1812, a textbook was published by Dr. Benjamin Rush, the founder of American psychiatry. His methods were, by standards of the twentieth century (which may still be in the dark) backward; but they were a beginning. In France, Pinel was followed by a disciple, Jean Etienne Esquirol, who advanced the idea that the mentally ill had to be loved before they could be healed; that the world still feared and hated and maligned the mentally diseased. Esquirol's work became known as "the moral treatment" of the insane.

As Governor, Seward had had repeatedly to deal with crime and the criminal mind, and with mental disease as a state problem. He was impressed with the large numbers who needed confinement, who ran afoul of the law, or committed murders; and frequently situations arose where the courts moved with uncertainty. In the first month of holding office, the case of Conway came to his attention. Conway had confessed murder, but the court and the prosecuting attorney were convinced he was insane and they had recommended commutation of his sentence. Seward granted the request, and then decided that the place to keep the man was in "the lunatic asylum." Not long after that Seward proposed a change in name for these institutions: call them hospitals. He knew of a few cases where he suspected that bribery had been employed to get offenders away from the gallows on grounds they were insane. But when such dispositions occurred, they were made in private chambers, between court and prosecutor and defender's attorneys, and there was as yet no known way to determine insanity scientifically. It was a whole area of corruption, human bewilderment and scientific lag.

In 1842, just before completing his administration, Seward sponsored a statute which forbade the trial for murder of anyone found to be insane. The hitch was: What was insanity? There were some possibly insane persons in whose cases the determination was very difficult. No clear definition existed, either in medicine or law. What was normal? How measure sanity itself? Powerful fundamental questions of right and wrong inhered in the problem, questions of responsibility and irresponsibility, good and evil. Subtle factors such as social pressures and unknown emotional impulses in the human soul that might derive from man's heritage—or from his current environment—were hidden in legal and physical mystery.

The word "psychiatry" was unknown, not even coined yet.

Seward's interest deepened; he applauded the efforts of Dorothea Dix who investigated conditions among the insane and the criminal in several hundred penitentiaries, county jails, almshouses and houses of correction. Her published findings showed conditions in many of these institutions to be no different from what had prevailed in Bethlehem Hospital in England a generation before, and she helped in founding thirty-two mental hospitals. Here was a successful one-woman campaign; it enlightened the public and it encouraged Seward to look deeply into the intricate nature of human behavior.

There were other stimulating influences here and in Europe that caught his imagination: the groping study known as "phrenology" that sought knowledge of man's nature through the shape of his head; mesmerism, or hypnotism; explorations in the area of neurology.

The witches that had flown through men's fancies and the bats of demonology were being driven out everywhere.

Physical science was choking much of superstition.

But there were still barbarisms on all sides: prison practice, the treatment of the insane, the blind ethnic attitudes; and Seward wanted to place his hands to the throats of these relics of darkness.

CHAPTER THREE

"This Case Is New"

Two days after Seward talked with Wyatt, the prisoner's trial opened.

It quickly spread through the village that their big man was undertaking something new in law.

So the villagers, in spite of snow that was two feet deep on the sidewalks, and even deeper in the ditches, went to their newly built courthouse to watch the ex-Governor perform, and to hear him innovate the unheard-of defense.

It was a good-sized court, and thirty rows of spectators' benches went deep into a long main room, but every seat was taken and in the rear the villagers stood.

They listened as the lawyer showed how the inhuman tortures which Wyatt had undergone had affected his reason.

Seward, at his own expense, brought to the village a half-dozen physicians who were studying the brain, the mind and human behavior. These men worked in asylums and hospitals over the state; they had published their findings. One was Dr. Amariah Brigham, the respected director of the Utica Lunatic Asylum.

"He's opposing God," some said of Seward. "He's interfering with the Sixth Commandment. He's monkeying around with the Lord's will." For, if he won, it meant that there were some cases of murder that might not be punishable by a death sentence; the accused could be placed in a "madhouse."

"He's a damned anti-capital punishment man!" others said,

adding that, if murderers were allowed to go free, a reign of terror might develop in society. Only punishment, only death by hanging, deterred men from killing one another. So, oppose these anti-capital punishment ideas!

They openly said that Seward was under the influence of his educated wife. She was the former Frances Miller. Fanny, they called her, Fanny Seward, the daughter of Judge Elijah Miller. The judge had built the biggest and most beautiful home in the village on South Street, and then Seward had come along, wooed Fanny—and moved right in. He and Fanny stayed on at Judge Miller's, and that's how Seward had got his start, they said. Married right. Married a smart girl and had a rich father-in-law, and Judge Miller had put him in the law business, and Fanny had egged him on in politics and he'd got to be Governor. Then, after he was Governor and came home broke from Albany, he started in at law again, and for the past three years he and his colleagues had gobbled up all the legal business. They were around winning cases all the time and getting big law deals from other counties—and now here was Bill Seward again, "the redhead," unpredictable, and undertaking—without a fee—the defense of a low-down convict who'd killed another prisoner . . . !

"He's meddling with the prison! He better watch out!" other interests hinted. Anything that had to do with the prison was controversial. Nearly every family had some connection with it through a keeper, a guard, a clerical worker, or an economic interest in the product of the prison's workshops. They didn't want to see the status of the prison tampered with in any way, and they didn't want to hear criticism of the prison administration or of the punishment system. "He ought to leave well enough alone," this group said, "leave that to the administration and to the state."

The townsmen pressed against each other in court, and they listened and they mumbled and they watched how the experts from the mental institutions got on the stand, one after another, and said how brutality had driven Wyatt crazy, and he shouldn't be tried as a sane man.

But a handful of villagers with a strange power that was reshaping that period were there, and backing Seward to the last word. They were religionists, Quakers, abolitionists, temperance

advocates, suffragists, antislavers, anti-capital punishment people, and they were interested in this trial as an experiment in human relations. The United States was trying to grow and to find itself and to build a way of life, and social forms were still unfolding and having indigenous growth.

It was out of this force that a new and peculiar slogan originated, with a dynamic of its own everywhere. They said, simply, "Fair play! Fair play! Give the man a chance. Hear him out!" and it quelled the bigoted and the backward and the ignorant and the cowardly. The concept, "Fair play!" was growing, and you could hear the term, snapped like a whip in this courtroom from time to time, when someone didn't like a point Seward was making, and somebody else did.

Seward told the jurors that old, out-of-date laws were being applied to new cases. English statute, which still guided Americans, was behind the times. "This case is new," he said. "Nothing of the kind was known when the law of evidence was established in England."

Moreover, the question of insanity wasn't the only novelty in the case. "This man is now to be convicted upon the testimony of infamous witnesses. . . ." The prosecutors, he explained, were employing other inmates of Auburn Prison to testify against Wyatt. These prisoners were under the terrible discipline of their jailers and could not but say in court what the prisonkeeps wished of them, or else face stark punishments.

Once, at a dramatic moment in this phase of the trial, a prisoner, brought to the stand by the prosecution under this compulsion, shouted to the astonished court, *"I'll die before I speak about this murder!"*

The trial moved on for eight days until Seward brought one of his principal witnesses to the stand. He was Dr. James Webster of Geneva, an experimentalist in the new realm of mental hygiene, and very quietly Webster told the villagers and the small-town jury of a new concept in human relations and in the realm of the mind—*moral insanity*. He summed up the history of the development of that idea until this moment in court with the simple statement: "It was foreshadowed by Pinel; it was developed by Esquirol, more perfectly completed by Prichard."

Seward didn't have a loud voice. Sometimes he could barely be heard beyond the dock. So the spectators craned to hear. They cupped their ears. "What did he say then?" they asked one another. "Did you get it? . . . What's he saying now? . . ."

"Quiet, quiet," they urged one another.

In the back of the room, a Negro stood on a chair, the better to hear, and a court attendant ordered him to get off the chair and sit down or get out.

One of the spectators was Fanny Seward, a gracious, somewhat frail woman, without remarkable beauty, but with radiance and a quality to inspire a husband. She was as tall as her husband, but that was no very great height, as he was only five feet four. She was in court for a few hours on the trial's last day, during her husband's summary. On an aisle seat in the middle of the room, she sat alongside her oldest son, Augustus Henry, then aged twenty. She had left at home, in the care of household help, her other three children, including a baby daughter—but she wanted to hear her husband this once in court. After all, he relied upon her for advice, for intellectual stimulation, even for general guidance. Each night he had talked over with her the day's developments in court.

Her Quaker training had given her a sympathy for most of the great causes of that hour, and, like her husband, she stayed abreast of most current discoveries and theories in the world of science and philosophy. The main influences still emanated from Europe, and she read the latest books and recommended reading matter to her husband. She found time for all that in spite of four children, as she found time this day to get into court during the hours before the action went to the jury.

She listened to the end of the trial and heard her husband speak of the need for juries, courts and laymen to look at the Wyatt case in the light of the new findings in man's age-old quest for self-discovery.

Altogether it was a novel case: the prison morality being tried out before a group of jurors of rustic, religious, Puritanic background; jurors with little knowledge of the jungle conditions inside the prison in their own midst. Yet they were honest and responsive in spite of the fact that an acquittal might mean a condemnation

of the prison discipline. The soft eloquence of Seward moved them. They were impressed by the visiting physicians, by the calm way in which the medical men described the work being done for and with the insane, and the varying forms of insanity as then understood.

The judge, Bowen Whiting, delivered a fair and impartial charge to the jury, and they went out.

But they couldn't agree on a verdict.

About half believed that Henry Wyatt wasn't responsible when he plunged the scissors blade into James Gordon.

Wyatt was returned to the State Prison to await a new trial.

Seward was encouraged, almost elated. A jury in disagreement was a partial success. He had *half* established the precedent he was after!

Over the village they talked of his brilliant performance. A hung jury, a near victory, and their big man making legal history!

But there was no very profound feeling over it, except a sense of local importance. It was a wintertime diversion, a show in the courtroom for those who could get away from work for a while, long enough to get in out of the cold and find a seat in court. Except, of course, for the prison crowd, who felt Seward was meddling with their administration, criticizing their punishment system and placing them under fire. Even so, they felt, let him set his precedent in court, let the matter die out.

That was about what would have happened had Wyatt been acquitted; a precedent would have been established. It might have influenced subsequent murder cases. There might have been a flurry in legal circles, a feather in Seward's cap, but the case might have been forgotten eventually even by the community of Auburn. . . . Probably nothing more.

But during the next three weeks two incidents occurred.

One was the simple matter of a routine business trip taken by William H. Seward. Right after the Wyatt trial, he left Auburn to go to the village of Florida, in Orange County, near New York City. That was where his father, Samuel Seward, lived. It was where William Seward had been born and where he grew up. Now his father wanted his help on a real-estate transaction.

Wintertime travel in that day was often perilous. After leaving Albany, the train went for two days through a severe snowstorm in the mountains of Massachusetts, reached Pittsfield, then Springfield. There, a change of trains; then, slowly, in frigid weather, rolling over tracks covered with deep snow, the train chugged on to New York. From there, upcountry again by train and stagecoach, arriving at last by sleigh at the village of Florida.

And while Seward was away, the other—a tragically important development that would rouse the nation—was taking place in Auburn.

PART TWO

The Van Nest Murders

CHAPTER FOUR

The Preparations of William Freeman

Early in the month of March, on the fifth, when snow overlay the streets of Auburn, and the gabled housetops were heavy and white, and each twig on each tree had a burden of flakes, a young man began to make certain preparations: he decided that the time had come for him to begin his work, and he must have the right weapons.

At about two o'clock on this Thursday afternoon, William Freeman, the man with the high resolve, left his boarding house in New Guinea, which was the Negro section of Auburn. He reached the snow-covered main street, Genesee Street, and he crunched through the snow until he came to the blacksmith shop of Joseph Morris, on Seminary Avenue. This short avenue was named for the theological seminary just beyond, where ministers were trained. There were only two or three houses on it . . . and the blacksmith shop.

Village people knew each other by sight even if often they were not well acquainted, so that the smith recognized that he had seen about the streets the young Negro who entered his shop.

William Freeman was twenty-two; he was a workman who took odd jobs sawing wood, fetching, anything to pick up a few pennies. He was lean and of less than middle height, and he had a stockiness about his shoulders. He had the pronounced features of the American Indian, but his coloring was brown; as he faced Joseph Morris he kept his head slightly down, but his eyes were

cast upward seeking those of the blacksmith. He wore a Webster coat, sometimes called a roundabout, a battered hat, and he had on a pair of snow-soaked, well-used-up shoes.

The smith stopped hammering the horseshoe that was on his anvil.

"Can you make a knife?" Freeman asked.

"What kind?"

Freeman picked up a piece of iron and tried to indicate the size and shape of the instrument he wanted. They had some difficulty communicating. The blacksmith, a large man, shirtless, moist from his labors, came close to the customer and described a sticking knife with two edges, commonly used for killing hogs.

"No, not what I want," and Freeman shook his head mildly.

An apprentice named Thomas, a young boy who was slightly acquainted with Freeman, came to the side of his employer. "Mr. Morris, you'll have to talk louder at this man. He's hard of hearing or deaf."

The blacksmith talked louder, but in a friendly way, saying he thought that the customer ought to whittle out a pattern of the knife, and to help out, the proprietor looked around for a soft piece of wood. But then—a better idea!—he suggested that Freeman go to the nearby carpenter shop, get the wood, whittle the model, and bring it back.

After that suggestion, as a by-interest, he asked, "What do you want it for?"

Freeman did not answer, but he may or may not have heard the question.

He left Joseph Morris's blacksmith shop and went to the carpenter's.

In a half hour he returned with a well-made wooden model of the knife he desired, and handing it to Morris, he asked, "What you charge?"

"What kind of steel you want it made of?"

"What you charge to make it of good cast steel?"

"A half dollar."

"I think you could afford to make it for a quarter."

"No, I can't."

"Yes, you can, you can afford it, a quarter."

The blacksmith resumed shaping his horseshoe. His hammer clanged workmanlike on the anvil; the sparks leaped and vanished, and leaped again. Freeman moved back and stood by the wall, in a watching, patient manner; he was thinking about the price and hoping to get a better bargain.

After standing by for fully an hour he stepped forward and offered, "I give you a half dollar if you grind it and put a handle on it."

"I can't do that," the blacksmith replied. "It's more trouble to grind it than to forge it."

The colored man continued to loll about; he didn't have much money.

For the second time blacksmith Morris asked, "What you want to do with the knife?"

Freeman didn't answer.

The blacksmith pursued the same thought, very loudly. *"You want to kill somebody, don't you?"*

"It's none of your business so long as you get your pay for it."

Still Freeman hung about, hoping to strike a bargain. The blacksmith muttered in a low tone to his aid, the boy Thomas, "This Negro is going to kill somebody." Yet he didn't believe his own speculations; he had just thought of the possibility.

William Freeman tried once more. "Can't you make it for a quarter?"

"Can't make it short of fifty cents."

Freeman left the shop without having made a deal.

There were other smiths to go to, and on Monday morning William Freeman went to the shop of George W. Hyatt.

Hyatt's place was on the main street, near the Exchange Building, and as Freeman entered, a young journeyman smith came toward him. What could they do for him?

Could they make a knife? Freeman asked.

The helper went to his employer. Hyatt was busy at the forge, and he suspended his work when he heard what the customer wanted. He went to a desk, where he kept blades ready made; he took out four or five knives and showed them to Freeman.

Freeman picked one, made of a file, examined it, and asked, "What this one here cost?"

"Thirty-five cents."

"Let me have it for twenty-five," Freeman bargained.

The blacksmith noticed Freeman's deafness, and supposed him to be a poor man, perhaps a family man, and, in a spirit of good will, said, "Can't afford it, but I'll do it for you anyway."

"You put a handle on it?"

In further generosity Hyatt put a handle on the knife, and as he worked, Freeman stood about and watched.

When the job was done, Freeman examined it carefully and wondered aloud whether a ferrule would strengthen the handle.

Hyatt said, "This handle won't split. You don't need a band around it."

"Will you grind it?"

Together they went to the grindstone. Freeman turned the grindstone while Hyatt held the blade to the stone; the wheel turned and scraped one edge of the blade into a fine sharpness.

Hyatt gave the finished knife to Freeman, and Freeman paid him twenty-five cents.

But before leaving, Freeman ground the blade further by himself; for many minutes he worked on until one edge of the knife was thinly prepared. He looked critically at the other edge, still thick and dull because of its file origins; then he left.

Two hours later Freeman returned to the same blacksmith, and this time he had a large jackknife, with the blade out, and he wanted Hyatt to rivet the blade back into its socket.

Apparently Freeman wanted the security of more than one weapon in whatever design he had.

Hyatt said he would charge "sixpence" for the job (English exchange was still partially in use), and Freeman bargained, "Threepence."

Hyatt agreed to make the rivet for three cents but, as he was busy, he asked Freeman if he couldn't repair the knife himself. But Hyatt decided to help Freeman anyway; so, together, they put the blade back into the handle.

Freeman gave Hyatt a sixpence piece, and the smith returned

three pennies. As they talked Hyatt had learned to exert his voice considerably, and he held his head close to Freeman's to make himself understood.

Freeman went away; and Hyatt had the virtuous feeling he had been decent and helpful to a poor man.

The detail of the right weapon to use was not satisfactorily settled in William Freeman's mind. He was planning an unusual operation, and he required unusually effective and reliable means.

Sometime between Monday and Thursday (Thursday was the day on which he acted), he continued this concern with his knives.

The knife that he had bought from Hyatt, which was already well sharpened, he took into the shop of Robert Simpson, a turner and chairmaker, near the Owasco canal dam.

Freeman asked the furniture maker to grind the flat edge for him. Simpson looked at the knife, recognized its handle as a type he sometimes sold to Hyatt, said he didn't have time, and handed it back. But, as an afterthought, he offered to put a belt on the wheel and let Freeman grind it himself if he wished.

Simpson set a grindstone in motion, and again Freeman began grinding; for the next three quarters of an hour he ground two edges onto the blade, until he was satisfied with the sharpness.

Then he laid three cents upon a workbench and left the place.

The next morning he returned to Simpson's shop, and this time he had with him a hickory club that may have been three feet long.

Freeman spoke to Simpson, but the turner couldn't make out what the man said, yet he had no objection when the colored man went straight to the workbench where he had employed himself the day before, and, with a brace and bit, began boring a hole into one end of the club.

Simpson, from his side of the shop, glancing occasionally at the busy Freeman, had the impression that he was trying to fit something into the hole end of the club. But he wasn't sure, and the view wasn't too good, and he was busy, and didn't think further of it.

This time Freeman did not pay anything as he left the shop.

During this same period—Monday through Thursday—while William Freeman moved about the village and bargained for his weapons, he saw and talked with many more villagers.

One of the stops was at the law office of William H. Seward, in the Exchange Building. Freeman wanted some legal advice.

Seward was away, of course, in the eastern part of the State, but the clerk, Charles A. Parsons, asked Freeman what he wanted. "I want a warrant," Freeman answered.

"For whom?" Parsons asked.

"For the man that sent me to prison."

"Why? . . . Who is it?"

"I want to get damage—the time I spent in prison—and I didn't do it."

"I think you want a justice's office. This is a law office."

"I want a warrant," Freeman said, not understanding the clerk, possibly not hearing him.

This fellow can hardly hear, Parsons thought.

"You go see Judge Paine or Judge Bostwick," the clerk advised.

They seemed not to understand each other, and Freeman went out.

The question of weapons was settled in Freeman's mind. He was satisfied now with those he had. All of his preparations were completed.

He was a scrupulous man about what he got out of society and what he gave; who paid him and what and why they paid him; and whether he was paid properly or improperly.

He had gone about these phases of his design with great attention to detail, with intense concern for trivial finances, with all deliberation and calculation, taking all due approaches in a proper and disarming manner—as if the deed he contemplated were an ordinary and lawful transaction.

On Thursday, March twelfth, William Freeman arose in his room at the home of Mary Ann Newark, where he boarded. Her house was in the little colored settlement called New Guinea, just

south of Auburn, and Freeman had room and board there in exchange for the chores he did for her.

She did washing for the students at the Theological Seminary and William carried clothes to and from the seminary, and performed other errands. In return he had a bedroom on the east of the house "up chamber."

Mary Newark did not pry into his life in any way, and she stayed out of his room, and she did not know that several sharp-edged weapons were concealed under his bed.

He went through the hours of this day exactly as he did every day. He did the same chores, carried baskets of laundry through the streets, met the same villagers and passed the usual comments about the weather, but beneath the surface of this course lay his real destiny and his true "will."

Early in the afternoon he went a few blocks to a one-story soap factory where his uncle by marriage, Aaron Demun, worked. He had not seen the uncle lately.

The uncle asked, "Where you boarding now?"

"Mary Ann Newark's. I brings my own provisions. Sometimes she cooks for me, sometimes I cooks for myself."

"You sleep with her?"

"No. She's a Christian, and don't do no such thing."

Then Freeman asked, "Uncle, can I have some tallow to grease my boots?"

"Help yourself, Bill."

William Freeman greased his boots with tallow so that they would look well for the great event that simmered and surfaced in his brain, and he left his uncle.

At four o'clock in the afternoon he went on an errand for Mary Newark to the nearby grocery store of Jonas Brown to buy some soap. She was always needing soap, she washed so many clothes for the ministerial students.

The spring darkness moved swiftly down over the region, and under cover of the falling night—perhaps about six o'clock—

William went to his room upstairs. He gathered up the instruments that he had been fashioning all week, and he dropped them out of the window into the pile of snow.

He went downstairs and entered the living room: there he alternately stood about, moved about, sat by the stove—and thought about his plan.

Night was on in full now. The villagers were having their supper, and many had finished the evening meal. The church bells tolled all over the town calling people to meeting, the bells of the Methodist Church, the Presbyterian and the Episcopal bells, the bells of the Catholic Church, and the bells of the other churches which were prosperous enough to have a steeple and a big bell in the steeple.

When he heard the bells everywhere tolling William Freeman knew it was time to go.

He halted in the doorway long enough to ask Mary Ann Newark if there was any last chore she wished him to do before he went out for the evening.

"Only fill the tub with snow," she said. Mary Newark washed the clothes in the melted snow, and she washed nearly every evening.

Freeman went outside with a large basket, filled it with snow, brought it back inside and dumped the snow into the washtub.

Then he went out again, tramped around the house in the snow to where he had dropped his honed weapons and picked them up. He placed the knife inside his Webster coat, at his left breast; he carried in an interior pocket the jackknife that he had repaired; and he also carried the long hickory club into one end of which he had inserted a sharp blade, having fashioned the pole into a kind of bayonet.

The bells stopped ringing.

The moon was coming up.

CHAPTER FIVE

The Massacre

William Freeman, fully armed, left the settlement of New Guinea, and by moonlight walked toward Owasco Lake. The rising circle in the sky lighted his way. The moonlight showed over all of the fields, and there was snow in the crotches of the trees, and snow was on the housetops. It was not a deep snow, but it was a covering. The road in the center of which Freeman plodded was partly snow-covered, partly wet rutted earth; the ditches were deep with snow. Cutters could race over all of the roads even if they did strike an occasional spot of earth. There were endless forests of trees all about and they were looming and white above the determined, steadily treading young man.

Once in a while, as Freeman moved on in the semi-light, away from the colored settlement and away from Auburn, he turned to glance at the blur of the village by night. He saw, principally, church steeples, higher than the trees, and the trees and the steeples obscured the mass of the village.

Mostly he looked steadily ahead as he approached the foot of the lake.

Owasco Lake, by moonlight, as on that night, was a silver blade eleven miles long and a mile wide. The southern end keened to a point and plunged into swamp and foothills, and that part was mostly unsettled. But the heel of the lake, where it broadened out into a bay, was dotted with occasional cottages along its east

and west shores. At the north end the lake suddenly converted to a slim river that flowed for two miles, entering the village of Auburn. The town sat on both banks of the stream, and its life was bound by steam power, by nature and by general affinity, to the lake up beyond toward which Freeman now walked.

He headed for the west shore, for the settlement of Fleming, which was just a handful of houses and a few farm properties. The family of principal consequences in that neighborhood was that of John G. Van Nest.

Van Nest was a well-to-do squire. "He's prosperous," they said of him, but he was well liked. At forty-one, Van Nest was supervisor of the village of Fleming, he was a justice of the peace, and, although he was not an officer of the nearby Sand Beach Church, he was a churchgoing man. He was steady, a grave, a reserved man; he was educated, and he operated a flourishing farm. For the past ten years, since he had married, he had lived in a large house close to the shore of the lake and a number of dependents lived with him in this same farmhouse. Besides his wife, Sarah Van Nest, there were three children: a daughter Julia; a middle son, Peter; and a baby boy, George, aged two. Van Nest's mother-in-law, Mrs. Peter Wyckoff, aged seventy, lived in the house; and besides her, a Cornelius Van Arsdale and a Miss Helen Holmes. The latter two were related by marriage and law, but not closely, to John Van Nest; yet because he was a good man and a generous man and because he had this large house, he accommodated these relatives. They worked about his property, and they had a pleasant home. The household, taken altogether, was one of the most respectable units in Cayuga County. Besides these responsibilities John Van Nest supported his aged mother and father, Mr. and Mrs. George Van Nest, who lived in a small house about a quarter of a mile below the big Van Nest house.

In John Van Nest's house everybody was up all evening, except the baby boy, George. They were entertaining a visitor, young Peter Williamson, a neighboring farmer. Lights were on in the sitting room. The talk was gay, there was laughter and peace.

At about eight o'clock Freeman reached the Lake Road. He made a turn at the Sand Beach Church and, through the trees, he

caught the first glimpse of the lake, quiet, glistening cold in the glow from the sky. He was on a narrow road, high trees on each side, and snow underfoot. He walked in the tracks made by the sleighs. Up ahead, beneath the lane of trees, he saw someone coming in a cutter.

It was James Cox, who lived in the neighborhood. He had been calling on neighbors, now he was going home. The bells on his cutter rang cheerfully as his horse paced toward Freeman. Freeman stepped aside, out of the snow-track ruts, to let the sleigh pass. Cox noticed how a figure, carrying what seemed to be a club or a gun, stopped to study him. Freeman was wondering whether to begin on this man. Later, he said of this instant's opportunity to halt and kill Cox, "I thought some of it."

Freeman didn't meet anyone else for another hour. Then, at a point in the road where it narrowed so sharply that there was barely room for a horse and sleigh to get by, William Patten, a farmer, came along in his cutter. The moonglow revealed a walking figure, a man carrying something. He caught up his horse sharply and tried to slow down; Freeman sheared off to the left, and Patten hoped he hadn't skinned the walker with his sleigh, or run over his toes, it was that close. Patten was sure he had seen this man about the market in Auburn, or sawing wood at the seminary.

Freeman kept his eyes straight ahead; for he was in the vicinity of the Fleming farmhouses, which was where he planned to be, and he wanted no side encounter. Far up the highway, he left the road, stayed in the shadow of the trees.

Uncertainty seemed to work in him. Where to begin?

For a while he prowled about the small home of the aged George Van Nest and his wife. The old folks, each in their seventies, were retiring, but Freeman, groping in the dooryard by their gate, was exposed by the moonlight. They saw, or perhaps felt, the presence of someone near their house. He watched them snuff the lamps downstairs and go upstairs.

A great need worked in him by now, and he groped onward toward the home of Squire Van Nest. He moved stealthily another hundred yards southward, staying in the white snow recesses of the trees and the bushes.

It was well after nine, and Freeman saw how various ones in

the Van Nest house began to retire. The visitor, Peter Williamson, got up, put on his heavy coat. Freeman could see John Van Nest ushering him to the door.

A few minutes after Williamson left the house everyone had retired but Mr. and Mrs. Van Nest.

At that time John Van Nest was in his chair in the sitting room waiting for his wife. Sarah Van Nest had stepped out of the back door into the yard behind their home. . . .

Peter Williamson, when he got a hundred rods away, heard a shrieking from the region of the Van Nests' that he would remember for all his remaining days.

At first it seemed to him that it was the shrieking of only one voice, and the sound of it momentarily froze him to the Lake Road as hard and as fast as the snow was packed by the sleighs.

Then he thought he heard the screaming of four or five voices.

Williamson walked faster—in the direction of his home near the Sand Beach Church. As the shrieking raised higher and higher, his feet went faster and faster.

Then, of a sudden . . . silence.

And Williamson heard only the crunch of his own boots in their rapid pacing over the hard road snow.

He moved on, his mind aboil from the sounds still staying within him.

When he came near his own farmhouse, he heard someone behind, on horseback.

The moon was brighter, higher, and everything was reflected in sharp black and white, as Williamson eagerly moved over to the side of the road to allow the odd figure of a man on horseback —on a kind of slow old horse—to move by on this ghostly route. The rider's leg brushed Williamson as the horse and rider passed, and the man on horseback fearlessly looked into Williamson's face.

The moon showed to Williamson the face of a man who was either a Negro or disguised as a Negro, a club or a gun slung from the man's side. Fear knifed into the heart of the young farmer and he had a flash recollection of a tale he had heard of a headless horseman. Yet this man had a head with eyes that glared at Williamson in a challenging way.

Williamson noticed that the horse was unsaddled. The rider guided the horse only by means of a halter; then he put the horse at a trot, and as the horse started up, farmer Williamson recognized from its gait whose it was!

It was an ancient, a thirty-year-old horse belonging to Mrs. Peter Wyckoff, the mother-in-law of John Van Nest!

Then, for the first time that night a cloud passed over the moon, and the cloud obscured the horse and the man on the horse.

Peter Williamson reached his home and he told his father what he had seen and what he had *heard.* "I'm going back," he said.

He saddled his own horse, and he galloped back to the Van Nests. He raced the mare and her hoofs chunked up the snow in the road.

When he arrived in the back yard of the Van Nest house he dismounted, then went inside, and he saw first, on the kitchen floor, the squire, dead. John Van Nest was lying face downward.

Williamson heard a rasping sound in the living room, and he hastened. There was Cornelius Van Arsdale, the workingman and relative of Van Nest. Van Arsdale was seated in a chair; he looked dazed; blood flowed from many wounds, and he was breathing only with great difficulty.

The young farmer hustled through the house. In the northwest corner room he discovered Mrs. Van Nest dead on the floor.

Williamson returned to the sitting room, for he thought he had seen something on the small bed there. He had. It was the baby boy, George. He was still living, but a knife had been plunged through him, penetrating the bed itself, and the infant would be dead in thirty minutes.

The other children, Peter and Julia, were in an upstairs room terrified, but they were alive and unharmed. Helen Holmes had gone for help.

There was one other unaccounted for. It was Mrs. Peter Wyckoff, the aged mother-in-law. Wounded and near to death, she was at that moment struggling across the farm fields to her neighbors for help.

Peter Williamson began to arouse the neighbors. Like some

latter-day Paul Revere he went from one farmhouse to the other, all through the neighborhood, to announce the most startling massacre since the Indians had been routed from this neighborhood not so long before.

He went on horseback from farmhouse to farmhouse along the lake and in the settlement of Fleming.

Others took up the alarm. They dressed and they galloped down to the village of Auburn.

By midnight the people in the lake area were flowing to the farmhouse. Doctors and the coroner, the sheriff and the village police of Auburn were on their way.

Within a few more hours the news reached widely over Cayuga County, the farmers freely waking one another to announce the horror.

Within a few days it spread over New York State.

Then it traveled swiftly over the whole of America.

The news passed everywhere that the most shocking and inexplicable crime since the nation was founded had occurred on the hitherto peaceful banks of Owasco Lake.

CHAPTER SIX

The Letter

A few days after the events at the lake, William Seward, now in Albany, received a letter from his wife; perhaps a historic note, for it set Seward's mind into motion:

> Dear Henry:
>
> The occurrence of that fearful murder has made me feel much alone with the little ones. You have, of course, read all that the newspapers can tell about the frightful affair; nothing else has been thought or talked of here for a week . . .

Seward had seen the sparse newspaper accounts. They detailed the atrocity itself, and they announced the capture of Freeman, but they did not deal with Freeman's reasons or purposes.

Seward wondered: Why would a man do this?

His wife's letter, though restrained and thoughtful, had not much more information in it than he could find in the press. But her letter probed:

> There is still something incomprehensible about it, to my mind. I cannot conceive it possible for a human being to commit a crime so awful without a strong motive, either real or imaginary, for this act. In this case no such motive has been discovered. . . .

The old mare which Freeman had seized from the Van Nest stable weakened rapidly, the strain of a fast run in the winter night too much for her. The road was slippery, Freeman was a

tense rider, his heels beat impatiently on the horse's flanks. At the outskirts of New Guinea the spent animal slipped, went down in the mud and snow. Freeman was angered, and the passion to kill still raged. He arose, mud-covered, from his fall, and he plunged the long blade-ended club deep and deadly into the horse.

Back at the Van Nests he had been battled by two of those he attacked, and he had come away with a badly cut right wrist. The wounded arm hung limp, bleeding. Yet he felt no pain, only the need to be on. He wrapped a handkerchief around the cut. Then, still carrying his war club, he walked eastward, fast, through the sleepy village. He crossed the bridge that spanned the Owasco River outlet, and he came to Genesee Street. He was alone, the village dark and snoring; and he headed for the Syracuse Road.

He pressed ahead through the moonlight between the frozen trees, soon reaching the long incline that led out of the village. He entered on the main road, walking in the middle of it, watching not to slip, and he hurried three more miles.

Quietly he approached George Burrington's barn where it jutted into the highway. Inside he searched for a sleek young gray horse he had seen on the main street of Auburn a few days earlier. He reached for a plaid blanket, with a white lining and a surcingle. He placed the blanket over the horse's back; then, by the leather halter, led the horse outside.

A mile and a half beyond Burrington's there was the village of Sennett, and at its edge the farmhouse of Mrs. Martha Godfrey. It was midnight when he guided the horse into the snow-covered front yard of Mrs. Godfrey's property.

He looked around. It was quiet. The yard was light, from the moon, but the inside of the house was darkened.

Mrs. Godfrey was high on his list, but he was uncertain, for his knife hand was disabled. He strained to test his right hand and wrist; it lifted slowly but the strength in it was gone.

He changed his mind.

He piloted the horse off of the property, and he headed east.

The moon was brilliant: it showed the road clear and well packed; and the rider and the horse leaped the miles. The club still dangled at his side, clutched under his throbbing right arm,

pinned at his side by his elbow. His good left hand gripped the halter string.

The new day, Friday, had begun.

The fresh horse, enlivened by the night ride, brought Freeman to Elbridge: a few quiet homes, a red-brick hotel for wayfarers, and a rural wintry silence. Then on to the darkened settlement of Nine Mile Creek, and after that the long hill that slanted downward for a mile, and inclined slowly upward for another mile. There the highway leveled out, and he galloped upon it until, at daylight, he reached the town of Syracuse; lamps were already lighted, the people waking, and he hurried through, heading north into Oswego County.

He had a destination: Schroeppel, a dash of houses in a rolling vale. Relatives farmed there, the De Puy brothers. Freeman's sister was married to a De Puy living in Auburn. The De Puys would shelter him while he rested and healed—so that he could resume with his work.

At one o'clock, with the sun high and warm, and threatening to melt the snow, he halted before the small farmhouse of the De Puys at the edge of the Schroeppel Road. He tied the animal to a fence post, and he went inside.

At once Abram De Puy, the oldest brother, challenged William to explain his ownership of the fine horse and the expensive blanket; and how was his hand hurt? And why were his clothes muddy? And what did he want?

"Got to rest up—work to do."

"What work?"

"Work to do—must rest up."

"*What caper you up to?*" Abram asked.

"Ain't no caper—work to do—must rest."

"*You can't stay here. Take the horse and go!*"

Freeman went.

At two o'clock he entered the village of Schroeppel. He had gone forty miles since leaving the Van Nests' seventeen hours earlier.

The sky was clear, and the sun lighted the disheveled and worn-looking colored man who dismounted from the horse before Gregg's Tavern.

Freeman entered the tavern; he needed food, a place to sleep, money so he could go on.

Through the window he saw coming toward the tavern a figure he recognized. A stroke of luck, it was the farmer James Amos. He remembered the big-bodied farm proprietor from one day last fall when he had husked corn in Amos's nearby barn.

Freeman, concealing his injured hand and wrist in his right coat pocket, hurried out front and approached the man he remembered. Did he want to buy a horse? No, said the farmer. Then did he want to trade? No.

But something in the hasty, troubled approach of the colored man, a vague recollecting, made the farmer stop and look over the fine horse and feel of the beautiful blanket.

Three others who had been inside the tavern, watching, came outside into the sun and cold. They were stirred and curious by the unusual incident of a strange colored man wandering into their settlement in midwinter with a horse that sweated from the paces it had been through.

One of the farmers, Edwin Corning, bargained with Freeman.

"Want eighty dollars," Freeman said.

"Give you fifty."

Freeman appeared to hesitate, then suddenly accepted. "All right, fifty."

The horse was worth eighty.

"Where'd you get this horse?" Corning asked, and Freeman answered a horse been given to him and he traded 'round and he bought this one here.

"You *stole* the horse!" Corning suddenly accused.

He didn't steal no horse, Freeman answered, a horse been given to him and he traded 'round and bought this one here!

Emboldened by support from a gathering of bystanders, Corning made a grab for the horse's halter.

Freeman yelled, "Let go! Let go!" and he jerked the halter one way while Corning and others pulled the halter the other way. Freeman kicked, and the others jumped aside.

Freeman turned to James Amos and said he was known to the farmer, that he'd husked corn last fall in Amos's barn, at the

husking bee; and then the farmer did remember where he had last seen the colored man; and Freeman told him that he came by the horse honest and that if he wasn't believed just go to the De Puys and they'd say so too; so farmer James Amos at once sent for a De Puy.

Freeman knew that he had to start moving. "Let go the horse! I got to go!" he said. But the farmer, Amos, pried Freeman's thumb away from the halter. They tussled and the Schroeppel man ordered, "Now you come into the house with me!"

"I had a knife, I'd gut you!" Freeman yelled, but he had left the long hickory back at Syracuse and the knife that slew the Van Nests was in their back yard.

They grappled momentarily, the villagers watching how the small colored man, in a great exertion, bent the big farmer down on one of his knees. But James Amos, in an earth-bred strength, rose and clutched Freeman and dragged him, though he clawed and kicked, inside of the tavern.

Three hours later, while Freeman sat eating his supper, having already been placed under arrest on a charge of suspicion of horse stealing, a stranger burst into the tavern. He was Alonzo Taylor, a lanky, red-faced constable of Cayuga County. He had trailed Freeman this far.

He hurried to the table, placed his hands heavily around Freeman's head, stared at him, and exclaimed, *"Ain't your name Freeman—you damned murderer!"*

> He says he should have murdered others, had he not been disabled; and also that it was his intention to set fire to the house. He manifests no remorse or fear of punishment. . . .

The Schroeppel villagers were astonished to learn that they had been harboring as a mere possible horse thief a man who had, Taylor said, "wiped out a whole family."

"Look up here," Taylor demanded, "tell me why you killed them!" Freeman looked up . . . and he laughed.

Laughter infuriated them.

"If I had a gun, I'd blow your brains out!" someone said.

Did he have accomplices? Taylor wanted to know. Were the De Puys in on the murders? farmer James Amos asked. Did any white folks help him plan it?

"Why did you murder Van Nest?" the constable asked.

"Don't know who you talking about."

Someone grabbed him, touseled his hair, shook his head, slapped him hard on one ear, and then struck him on the other ear harder, for he was either hard of hearing or made out that he was. "That'll make you hear!"

It was no longer possible for Freeman to eat peaceably, though he still tried to bring food to his mouth with his able left hand.

They pulled him away from the table.

They placed him on the floor and they searched him; there was a single penny in a pocket. Then they bound him with shackles and rope, his hands at his back, and kept on with the questioning.

The proprietor of the tavern lighted more lamps; they were aglow now from tables and from pedestals. Freeman and the shadows of him were on the tavern floor. Sometimes they stood him up, then sat him down again.

Only when they talked of the stolen horses he muttered, ". . . they got the horse . . ." or ". . . other horse fell . . . I left it . . ." vague, half-mumbled admissions that he was there.

They knew they had their man but didn't understand him.

"Why did you murder the child?"

"Didn't know they was a child."

He checked himself, stiffened, said strongly, "Won't answer no more questions. They can prove anything against me, let 'em prove it!"

Early on Saturday morning, before daylight, Constable Alonzo Taylor started for Auburn with Freeman. The prisoner lay trussed and prone on a blanket on the wooden floor of the covered sleigh. A colored man drove the vehicle carrying Freeman, while Taylor rode horseback in the rear so as to keep an eye on his captive. Taylor was proud; got him the biggest catch since Gates nailed Burgoyne at Saratoga.

Telegraph service had begun in Auburn only a few days before and, for the first time, information could pass between certain local points by wire. Only recently the big New York City dailies, the *Herald* and the *Tribune*, announced over some dispatches the dramatic line "By Magnetic Telegraph." The knowledge of Freeman's capture arrived at Syracuse, and it was relayed to Oswego. It traveled by word of mouth, from sleigh to sleigh, to each village, and by the same combination of oral means and "magnetic telegraph" the report reached back to Auburn that William Freeman was taken. Deputy Abram Vanderheyden was sent to meet him.

The officer, a corpulent, ruddy-faced, out-of-doors figure, had kept an eye on Freeman since the boyhood of the colored man. Vanderheyden had arrested him two or three times for minor offenses and finally for the more serious charge of horse stealing. Now he met the captive at the village of Baldwinsville, and the sleigh halted for a few minutes while the deputy peered inside at the prone and bound prisoner.

"Bill, Bill," he said, "how in the world you come to do this?"

Freeman, from his straitened position on the blanket, answered, "Don't want you to say nothing about it."

But the officer, speaking familiarly, as one who Freeman could certainly confide in if he wished, asked how the hand got hurt.

"Stabbing—stabbing."

"What you want to kill Van Nest for?"

"Don't know who you talking about."

"We're alone, Bill. You might as well tell me how you come to do this."

Freeman peered at the man who intermittently had figured in his life. "You know there's no law for me."

"What you mean?"

"You know what I mean—there's no law for me."

"Don't know what you mean."

"You ought to know, you ought to know there's no law for me."

"There's law for everybody."

"No there ain't, none for me."

Once more, in that exasperated, personally disappointed tone,

Deputy Vanderheyden asked, "Bill, how in the world you come to do this!"

"*They—won't—pay—me.*"

> I believe he must have been impelled by some motive not yet revealed. . . . There was a terrible commotion in the village as he was carried through; it is a matter of wonder to me now that, in that excited state of popular feeling, the creature was not murdered on the spot. . . . I trust in the mercy of God I shall never be witness to such an outburst of the spirit of vengeance as I saw while they were carrying the murderer past our door.

CHAPTER SEVEN

The Pieces and Parts of a Man

On Saturday, in Auburn and over the whole lake country, the day was raw. There was only the damp chill which was usual over the region at this time of year. Gray skies rolled heavily, unbroken by any bright color, and cold vapor showered everything ceaselessly. So the townsmen dressed their warmest. They mufflered their necks, they wore mittens, fur hats, closed all the buttons on their winter coats, and they moved down the hills into the town center.

By early afternoon a thousand men walked restlessly over the slate and wooden slab sidewalks. They went from the courthouse to the post office, to the taverns, in and out of the American Hotel, and they crossed and recrossed Genesee Street. They mushed through the marshy State Street area and headed for the brick sidewalk on the main street. At the hotels and taverns where small groups usually played checkers, or gossiped, or got the news from any travelers passing through their village, the games were off: the talk with the strangers was over: all the talk was of Bill Freeman. The townsmen, all with mustaches and some with goatees, others bearded or with sideburns, asked for action. Farmers came in on all roads; they hitched their horses to the stone posts, or brought them into the livery stables, and they joined the shapeless gathering. The mood everywhere was for a speedy lynching, a quick and a just end for Bill Freeman—they were calling him "Bill"—and save the county some money.

Some of the factories were closed this afternoon, so the workmen were out: the carriage makers, the cotton-goods workers, those who worked in the gun factory and in the plant where they made threshing machines. Besides these, the laborers from the small plants along the Owasco River, where they made brass clocks, carpets and combs and boots and shoes; the honest people of the village, the outraged, the friends of the Van Nests; the people who worked in copper and tin and sheet iron, and supported wives and children and wanted a safe village; and the businessmen who ran the shops on the main street—all were out, and they let out their help early, the clerks and the assistants; and a deacon was in the center of the crowd talking lynch action; a schoolteacher, too, saying, "Kill the beast!" They paraded before the tall new warehouses made of stone, and they looked at their prosperous village, with the brick buildings going up, and everywhere new wooden homes replacing the old log houses they had lived in until recently: here was their town, Auburn, named after Oliver Goldsmith's Auburn, "loveliest village of the plain," and someone they called "a fiend in human shape" had despoiled it, and this afternoon was a good time for a stringing up.

At two o'clock the captive party, arriving on the North Street road, reached the town's edge. Ten village and county policemen—deputies, constables, aides—were there on horseback to convoy Freeman. They rode in front, in back of and on the side of the canvas-topped sleigh. Behind came a train of farmers, some on horseback, and they had been following for miles. This procession, with bells jangling, with horses thudding on cobbled North Street hill, became thicker and louder.

Women stared from the windows, and children ran out into their front yards. A few men not yet outside grabbed their coats and slammed the doors.

The escort party, swamped by this pushing, hungry populace, pressed through the main street, past the churches, toward the courthouse and the office of District Attorney Luman Sherwood.

As the villagers watched the approaching covered sleigh with its cordon of officials, each looked on with his own thought of William Freeman. None who gazed from his office window or his

doorway, or took part in the rush at the courthouse, knew in any detail the part of any other Auburnian in the life of the captive. Each townsman had his own experience, his own limited connection with Freeman, a single memory or a dozen memories, a remote recollection or a recent one. Many had dealt with him in the immediate days and hours preceding the events at the lake. One remembered him when he was a child. Another knew him as an employee. A third remembered his smiling good nature on some remote occasion. Another recalled a display of temperament. For others he had sawed wood, or drawn a team of horses, or ploughed, or driven cattle, or been caught pilfering a peddler's cart, or worked in a yard or in a kitchen, or gone on errands; William Freeman was known all over the village in this piecemeal manner. Known as a colored man, a dweller in New Guinea, a figure in the streets, to whom one might call out, "Hi, want to take a little job?"

And as they viewed the covered sleigh, with its load of agony, each person saw the fragment of his own life that related to William Freeman.

The Universalist: Ira Curtis, aged fifty-two, ran a tavern on the main street. He went outside, stood by the curb and saw how they rushed by him with his former employee. Years before Curtis had operated a restaurant called the Western Exchange, and Freeman had worked for him about the kitchen and the yard. The employment had only been for a short time, and Curtis didn't think too highly of Freeman as a helper, but he had no ill will toward him. It was against his principles as a Universalist to strike anyone, and he hadn't even reproved Freeman. Just the one thing: when William left for other employment, Curtis didn't miss him. But he was a religionist and a good citizen; he was quickened and hurt, and he felt that evil had suddenly swept the village—and he was part of the evil. His reaction, as they passed, was that of a pang of conscience, a faint feeling of human shame, and a sense of the complication of living.

The Overseer of the Poor: Josiah Sherwood, overseer of the poor, peered through the window pane of a general store on the main street. He was well acquainted with the poor of New Guinea.

Often he helped them with town funds when work was scarce and the winter cold was on, and he knew each small little house in the colored settlement—and he had known Freeman a lifetime. He had helped Bill's mother with small sums of village money to take care of her family after her husband, Harry Freeman, died. He had watched Bill grow from infancy to boyhood, to young manhood—and he couldn't quite believe that this was happening outside. He was struck with a thought about "the way a person can turn out."

The Juror: Lewis Markham was one of the multitude gathered before the courthouse awaiting the return of the captive. He even remembered the day of Freeman's birth. On that day Harry Freeman, the happy father, had actually stopped Markham in the street and handed him a cigar as he gave the news of the birth of a son.

Lewis Markham came from a family of old village settlers, and the Markhams and the Freemans were close. Harry Freeman drove a team for a year for the Markhams a long time ago, around the time when Lewis Markham got that cigar. And Markham knew the old grandfather, one of the two founders of the village, also named Harry Freeman—and *still living* in New Guinea.

But about five and a half years before, Lewis Markham had sat as a juror at the trial of William Freeman for the theft of a horse from Mrs. Martha Godfrey, and Markham had been one of the twelve to bring in a verdict of guilty.

The Keeper of the Jail: Tall Israel Wood gaped over the heads of the jostlers at the man he had known since childhood. "Why," he said to anyone who would listen, "I remember the first time I seen him. He couldn't have been more than two-three years old. It was around the neighborhood of Watson's brewery, before he could walk." And after Bill learned to walk, and became a colored child about the village and people began to employ him, Israel Wood employed him. Then, about six years ago, when Israel Wood was keeper of the County Jail, the boy he had always known was brought in there. They said he stole a horse. Freeman broke jail and he got away for a few days, as far away as Lyons. Wood went thirty miles to Lyons and brought him back to Auburn. It all came

back to him now, the part he had in Freeman's life, of how he'd caught the fellow and brought him home.

The Justice: Lyman Paine, a magistrate for the past twelve years, observed from his office window on the second floor of a main street building, the milling below.

Strange, he thought, Bill Freeman was in here just three days ago.

On the Monday preceding the murders Freeman had walked into this very room and said, "I want a warrant."

"Who for?" Judge Paine asked.

Freeman wanted to arrest someone who, he said, had once put him in State Prison. The judge told Freeman that he had to get more facts before a warrant could be issued. Freeman had stood about, in his habit of waiting patiently for people to do something about his claims. At last he threw a quarter on the judge's desk. *"I demand a warrant!"*

"You better take your money and put it in your pocket," the justice of the peace advised. He had some further advice. "You better go away and find a place and go to work. If you don't, you'll get into prison again." The judge lifted his voice because Freeman was obviously hard of hearing, but also because he felt like urging the man out.

"I'm so deaf I *can't* get work. People won't give me what to do. I been trying and I *can't* get work."

"Then you better go to the overseer of the poor and let him help you. Go see Josiah Sherwood."

Freeman went away, but he returned to the judge later that day and this time, in a rage, he demanded a warrant.

"You better go away!" Judge Paine boomed.

. . . The judge looked out of the window reflectively, and it came back to him, but he saw no connection between Freeman's visit to his office and the murder of the Van Nests.

Justice of the Peace No. 2: Only three doors from Judge Paine there was another justice, Judge James Bostwick, and he had had several experiences lately with William Freeman.

The Bostwicks were among the settlers of the village, and the

white Bostwicks had known the colored Freemans from the time when only a few log cabins marked the area that now held seven thousand villagers.

One day, not long before, Bill had come into this office and asked for a warrant for the arrest of a man named Murfey. Bill had sawed wood for Murfey and he told the judge that Murfey hadn't paid him properly. The judge, who knew Murfey, looked into the matter, and he refused to issue a warrant.

But only one day before the murders Bill Freeman had come to see him again. This time he had asked for warrants for the people who had put him in prison years before. And he said, "*They tell me I can get my pay now.*"

Judge Paine had listened curiously to Freeman and he wondered what went on in the man's mind. "Bill, you've got no remedy for all that. It's too late to do anything about that."

. . . The judge put on his heavy coat in a hurry. They'd need him at the courthouse when they charged Freeman with murder.

The Barber: Joseph Quincy was cutting someone's hair in his main-street barbershop when he heard the commotion outside.

The barber had known Freeman about as others knew him, by sight, perhaps through having seen him saw wood, or drive cattle through the village, or hurry on some errand carrying laundry.

But only four or five days before Quincy had a chance to have a few words with the young man. Freeman, with a little hair under his chin and hair on his upper lip, stopped at the barber's, walked inside, and stood in the middle of the shop and asked, "Will you shave me?"

"I don't shave colored people," Quincy answered.

Freeman may not have heard; he stroked his whiskers a bit and again asked if he could get a shave.

This time, loudly, but without pique, only suspecting Freeman didn't hear well, the barber answered, "I DON'T SHAVE COLORED PEOPLE."

Freeman turned and walked out of the shop.

As the captive was rushed by, Quincy asked himself, "I wonder why he wanted a shave."

The Man Who Owned the Umbrella: Jefferson Wellington, a young man in his twenties, large and well-featured, walked along Genesee Street until he came to the corner of Fulton. There a steep hill leads downward, and a new hill awakes and leads on to the courthouse. He stopped at the intersection and he listened to a swelling roar of human sound that swept up the hill. He started running to the courthouse. He knew they had brought Freeman home.

I'm sure glad I horsewhipped him when I did, he thought. He borrowed my umbrella and he didn't return it. I told him I'd beat him up if he didn't bring it to me. He didn't and I horsewhipped him. Come to think about it, he threw an iron at me and threatened to kill me then. We sure were mad at each other. I'm sure glad I horsewhipped him. He couldn't move after I finished with him.

That had been seven or eight years earlier.

The Auburnians had erected a costly new courthouse ten years before. It was a Greek-style structure, with a half-dozen stone columns in the façade, cylindrical drums on the roof and an emblematic cupola. It was big for a settlement like Auburn, but they expected the place to grow.

Now, the villagers—each with a portion of Freeman's life somewhere in his own experience—pressed between the columns trying to get at him. Constables, in a locked-arm circle about Freeman, tried to squeeze through the front door while the village president, Ethan Warden, hollered, "Fair trial! Fair trial!" Other police on horseback spurred their animals. The horses snorted, they reared and showed their iron shoes, they brushed against each other and whinnied—and the villagers fell back. The first rush was over, Freeman was inside.

Judge Bostwick—after a formal murder charge was placed against Freeman—said it was important for Harry Van Arsdale, who was still alive at the Van Nest house, to identify the colored man. It was a risk taking Freeman back through that mob, but they must.

So that, as hastily as they had dragged him inside, the lawmakers and the police now hurried him out. They shoved him into

the same covered sleigh, and they were off: the police cordon and the villagers in a large disorganized rush by foot, horseback and in sleighs, by way of New Guinea.

The New Guineans lived in a dozen or so one-story wooden houses. They were little places of one or two rooms, perhaps an attic upstairs. Now the houses were snow covered and icicles clung from the roof edges, and from the branches of the huge maples all around bursts of snow sometimes dropped. They were the homes of free Negroes, for the New York State Emancipation Act of 1827 had liberated them, legally at least. They were menials; they came and went freely and there was no curfew upon them at night; they were close-knit in their isolation from the white community and their lives were meshed, in joy and trouble.

The colored looked out of their front windows at the fearful sight and they noticed how the reverberations in the hilly street, the clatter in the snow-covered, rutted road, made chunks of snow fall from the trees . . . and each remembered his or her fragment of William Freeman's life. . . .

The Old Dancing Partner: Deborah De Puy hid behind the white curtain of the unpainted frame house in which she lived with her husband, Hiram De Puy. Hiram's brother, John, was married to William Freeman's sister, so there was an affinity between the De Puys and the Freemans. In the old days, when William was in his 'teens and before he went to prison on the horse-stealing charge, Deborah had been William's dancing partner at the socials. They grew up together. They saw each other daily, played games together in the yards and in the streets, went on hay rides and sleigh rides, and she knew Bill Freeman as a cheerful, a smart, a gay, a lively one.

She was thinking now of the murders and their effect on the handful of colored, like themselves. Hiram De Puy stood near her, and he too peeked outside at the noisy and fast-moving demonstration headed toward the Van Nest farm.

"Hiram! Hiram!" Deborah said to her husband, gripping his wrist, "they going to kill him!"

The Childhood Playmate: Adam Gray lived in a house two doors from Deborah De Puy. He boldly came out on the little

porch and he watched the parade reel by. He peered at the back of the covered sleigh for a glimpse of his childhood playmate. Fear smote him, and a great uncertainty. What kind of a life was it? he asked himself.

He and Bill Freeman had wrestled all over New Guinea; they had picked wild elderberries in the nearby woods, and caught bullfrogs together, and fussed with the dogs that roamed New Guinea, begging scraps at each door. They had run races, gossiped, fought and made up, and now. . . .

The Co-Worker: Robert Freeman, no relative of William's, stood on the wooden slab sidewalk in front of the New Guinea house where he boarded. When the paraders stared at him with ferocity he stared back, afraid, but like a man who had the right to look the village and the world in the face.

Once, eight years earlier, he and William Freeman had worked together at the American Hotel on East Genesee Street. Robert had been a waiter and William had cleaned the dishes and silverware of the dining room table. After work—they were young—they played together, the out-of-doors games of the teen-aged villagers.

"God, what's happened?" he asked.

The Astonished Hostess: The procession was almost out of New Guinea. Soon they'd take a turn onto the Lake Road. But there were one or two more houses. And in one little frame house that rested on four corners of stone lived Laura Willard. A dozen other New Guineans were closeted there with her, staring out of the front window at the madness sledding by. William Freeman had boarded at Laura Willard's tiny house only a few months earlier.

On the night before the murders she had a party at her house and most of the colored attended. Freeman was there, and he was silent, a wallflower all evening. He hadn't even danced with his old dancing partner, Deborah De Puy, and he did not sing.

But he was one of the last to leave.

Now Laura Willard, astonished, trying to reconstruct what happened during the twenty-four hour period from the party at her house to the party at the Van Nests', kept saying over and

over, "He was to this very house only the night before! . . . This *very* house! . . . Who'd think . . ."

The others echoed, "He *was* . . . in this *very* room three nights ago. . . ."

The Pioneer: The demonstration went past a final little shack.

A very old, white-haired man hobbled out of his house, where he lived with kin, and through glazed eyes he looked at the rambling procession of sleighs, with their jangling bells, the men on horseback, and the crowded cutters behind them.

He was an ill and a dying old man with a long memory.

He had seen this place grow, from a single house, Colonel Hardenbergh's log house, into a settlement. He had watched the village expand so that it filled the hollows of the hills about Auburn: East Hill, West Hill, North Hill and Capitol Hill.

In 1801 he and his slave wife had been manumitted by their master, Colonel Hardenbergh. They had a son, the first black child to be born in the settlement, and they named the son Harry. Harry was the father of William Freeman, now in chains, in the bottom of a sleigh.

So the old man was one of the two founders of Auburn and grandfather of the man now being slung through New Guinea.

The grandfather looked at the sight and he remembered how he and Colonel Hardenbergh had settled this place. The colonel had fought in the Revolution, and old Harry Freeman had cleared the fields and helped build the log house in which the colonel lived. And later, after the colonel freed him, Harry Freeman had founded New Guinea with land that had been given to him by his master.

And now the veteran of the clearing of the forest, William Freeman's old black grandfather, who was—they said—dying, went back into his home and he lay down.

CHAPTER EIGHT

Stars Out over Auburn

The newspapers in New York State told the rest, with diagrams of the Van Nest house, pictures of Freeman, and the unstyled headlines of that time:

PARTICULARS OF THE MURDER CASE AT AUBURN

Or

ATROCIOUS MASSACRE

Or

THE EXCITEMENT AT AUBURN

The *Rochester Advertiser* printed the most restrained account of what happened at the lake:

> . . . An immense crowd followed him, and on arriving at the house, while the officers and Negro were in the house, a motion was made to the throng outside by one of the most substantial men of Auburn that the wretch be taken from the officers and strung up on the first tree. The motion was seconded by a deacon of the church and carried by a deafening "aye" from the crowd. At this point one of the Justices came to the door and made a speech to them telling them that the probability was that there were others that had instigated the Negro to commit the horrid deed and justice demanded that he should have an examination. The crowd promised that they would not molest him, but when he made his appearance, he was surrounded notwithstanding by men, with their arms closely

> locked, some of the more excitable actually jumped on him. He was finally put in a covered wagon and brought to Auburn. Two individuals had started for the village in advance of the wagon, at full speed, and attracted the attention of the crowd to the Court House, for the purpose of getting the Negro into the side door of the jail unmolested. They rushed with such force against the jail that the fence surrounding it was carried away.

In Albany, Seward read another version of the events at home. The proslavery *Albany Argus* wasn't surprised that "it was with the utmost difficulty that the people of Auburn could be prevented from executing summary justice upon the fiend in human shape."

> . . . The law's delays and quibbles are such, and such the mistakes and false humanity of the anti-capital punishment advocates, who sometimes creep upon our juries, that even in the most undoubted cases of murder, the wretch is as likely to escape as to suffer the just punishment of his deeds. We do not regret that in this instance the wretch escaped the just retribution of an excited popular feeling, but we applaud this honest and indignant feeling, show itself as it may.

It was known that there were antislavers in the region, like Seward and his clique, and Whigs, Quakers, humanitarians and religionists who opposed slavery and talked for the colored people at every opportunity. All winter long there had been murmurings against Seward anyway because of the Wyatt case, and perhaps they wanted to hear that there might be a chance to get at the reform elements.

For this brooded over the villagers: the times, the times they were living in, and the personalities and the issues of the day. An age of science was opening; the "magnetic telegraph," steam and railways; a time also of human rights, and the mind was coming under study. Physicians here and in Europe probed the human consciousness; lawyers challenged traditional jurisprudence; it was an era of redefinition. And this, inside a milieu of a nation trying to unite, striving also to dissever.

The liberation from England had unleashed a whole train of ideas and movements; and now, in the 1840s, there were men and situations to reflect these developments, and it was evident that

somehow Freeman's crime was related to it all, to the politics and philosophy of the period, which had, some said, the color question at the core of it.

So, when the lynch plan was forestalled, it was only because a judge had intimated that others, by implication white antislavers, might be involved. He had appealed to the heart of the times, and there was a brief simmering and wavering of their fury, long enough for the law to protect and jail its captive.

But around the jailhouse the villagers were restless and raging, and they roamed about the county buildings until evening.

After the darkness fell, the church bells started ringing.

They rang each evening from those steeples that held bells. They signified peace and an end of the day's work. But this night there was such a stir in the village mind that the tolling was, to many, disruptive of the more pleasant prospect of destroying Freeman.

Yet they went home to hot meals and to tell wives and children of the day's drama.

By nine o'clock the little ones were abed.

By ten or eleven the adults were retiring, and the oil lamps were snuffing out everywhere.

At midnight and in the hours thereafter the town slipped into its usual nighttime quiet.

It was black, the stars burning quiet and high, like candles—on man's many altars.

PART THREE

"No Seward Will Defend Freeman!"

CHAPTER NINE

"The Redhead Did It"

Seward was a redhead. His hair had been so red when he was younger that, when he first ran for Governor as a Whig, his opposition chopped at him for being "a red-haired young man, without a record and unknown." But his supporters struck back, using Seward's red hair as a flag, and the *New York Times* replied, "Our candidate is twenty-six, has red hair and a long nose." The war on redheads was on then, and it didn't end until a Whig Party writer in the *Commercial Advertiser* wrote a two-column defense of redheads, pointing out that among the more famous ones were Esau, Cato, Rob Roy, Clovis, Samson, Jason and Narcissus. And thereafter, when Seward achieved something, the politicians said, *The redhead did it,* and when he made a mis-move his enemies said the same thing.

At forty-five, when he received the news of the Van Nest murders in Albany, his hair had lost some of its carroty quality, and it was of brownish cast with gray streaks, but his nose was as bold as ever. His general appearance stayed as when he was younger: it was that of a slender man of less than medium height with a rather oversize head. He had quick boyish movements, and a swift high laugh that died away fast. His eyes were a clear blue, large and inquiring, and he kept smoothly shaved, shaving sometimes twice a day.

Traveling, he usually wore gray, and he was wearing gray now because he was going home. Not because of the Van Nest

affair, about which he knew little and had no opinions, but because he had a law practice in Auburn. There was a patent case pending in Ohio and he might soon have to go out there. His business in the eastern part of New York State was completed, and there was, besides, his family to see. Being in law and politics kept him away from his wife and his four children more than he wanted to be, and he was returning to them, primarily.

In 1846, it took thirteen hours to travel one hundred and fifty miles by railway coach from Albany to Auburn. It was March. Snow was over the fields. It covered the steel tracks, gave an endless whiteness to the Mohawk Valley. But Seward liked to travel. After all, much of America wasn't yet explored—even in 1846, and few had the opportunity to see the size of the country. Seward enjoyed seeing it all from the train or through the windows of "the horse express"—the stagecoach. He enjoyed writing letters to his family and friends, describing the towns through which he passed, the look of the countryside, the perils of winter travel in steep drifts that retarded the trains. He had seen the far South, he'd shipped along the Eastern Coast; he wanted to see the West; and he knew New York State as well as anyone.

Some phases of travel were wearisome. Four railroad corporations owned franchises between Albany and Auburn, each controlling a stretch of thirty or forty miles of line. When he changed at Schenectady, Utica and Syracuse, he, like the other passengers, had to go to the baggage car and find his belongings in the big confused pile of trunks and suitcases, and have them chalked and transferred to the new connection. Through tickets and express trains weren't known yet; it was exactly a century before the jet age.

And yet, these—his physical trips—were his lesser travels. His real and great journeying was in the realm of the human mind, through the ideas and movements of his own time, and he was experiencing this locomotion as fully as any man alive.

CHAPTER TEN

Did Seward Inspire the Van Nest Murders?

On the evening of the day when the sheriff and his aides managed to prevent Freeman's lynching and lodge him safely in the County Jail, there was an informal meeting of outraged town leaders at the home of Judge Bowen Whiting.

The judge had invited them to his big, comfortable home on East Genesee Street hill. He had made his money in real estate and had picked a good spot for his own residence. In the well-lighted sitting room, with a half-dozen lamps going, the wicks high, last fall's apples in a big bowl on the table, and dry wine for those who'd take a drink or two, the judge entertained several county judges: Joseph Richardson, Isaac Sisson and Elisha Sheldon. Two peace justices also dropped in, and young District Attorney Luman Sherwood.

The judge feared that something of the fallout of the Van Nest murders might settle upon him because he had presided over the Wyatt trial. Tonight he abandoned all impartiality, and he talked of the crime done to the Van Nests and the punishment that ought to follow for Freeman and anyone who sympathized with him.

There was a knock on the front door. The judge personally opened it, thinking to see another of the town leaders, but it was only Alvah Fuller, a sheriff's assistant. He was slight, thin-faced; in a group of five men he might not be noticed.

"Good evening, Fuller, come in."

"Ah, judge . . . I—ah, I'm not going to stay . . . I just came to tell you something."

"Come *in*," the judge urged. Fuller was standing in the doorway, his hand at his fur hat, as if he would take it off there in the cold night air. Fuller allowed himself to be drawn in.

"I was just going to say . . . I remember seeing this fellow Freeman attending the Wyatt trial!"

"What!"

"Yes, he came several times."

"He *did?*"

"He listened to Governor Seward 'fend for Wyatt."

Judge Bowen asked Fuller sharply, "Are you *sure* of this?"

"Sure I'm sure. I was helping Sheriff Pettibone at the jail and at the courthouse at the time. I should think I saw him in the courthouse two or three days running. He stood on the seat in the back of the court——"

"That a fact?" the judge interrupted.

"Yes," Fuller went on, with heat. "I told him to get off the seat he was standing on. I said to him, 'People don't stand on seats in court, get down!' He didn't get down. So I took him off and I shook him. . . ."

"You *shook* him?"

"I *shook* him! . . . Saw him on the seat with his feet more than once. . . . You can check with lawyer Andrus. Andrus saw him there, too. Lots of folks saw him. I think Jack Hulbert sat right near him."

Judge Whiting turned to his stunned fellow jurists. There was a look of revelation over him, as if a new lamp had been lighted in the room. "Why—why—that devil must have figured he could kill the Van Nests—and plead insanity—and get Seward to defend him!"

The meaning was deafening! It reached the whole company with the same force and at the same instant:—*Seward's defense of Wyatt might have inspired Freeman to the Fleming massacre!*

The Governor might be responsible indirectly. . . .

Or *directly* for the wiping out of the family!

Then, shattering the quiet of his living room, Judge Whiting

boomed to the others, "NO SEWARD WILL TAKE THIS CASE! NO SEWARD WILL DEFEND FREEMAN!"

The judge's words went over Auburn like a chant, a war cry, *No Seward will defend* . . . Men, women and children hissed the expression as a warning whisper, as a threat, a defiance, *No Seward will* . . .

The report that Freeman had attended the Wyatt trial circled through the village. . . . *Seward gave him the idea!* . . . *The Governor set off the murders!* . . . *If there hadn't been a Seward at the Wyatt trial, there might not have been the Van Nest murders!*

It changed and it charged the atmosphere. It was an explosion that suddenly crystallized the town's thinking on the Wyatt matter, and it raised in far more complicated ways, not only the issue of insane murder, but a whole movement of ideas related to the slave question, capital punishment, public schooling, religion, the condition of medicine, the state of penology. Suddenly there was an explosion of it all.

So the moods seesawed through the community, involving the former Governor, the Wyatt case, and now the new murders; and trailing backward—though no townsman, save possibly Seward, could have realized it—to European influences, to physicians Pinel and Esquirol, to King George III and the changing times.

And to the infuriated village, Seward was returning. He could not, of course, know the repercussions of the Van Nest murders, and he couldn't possibly suspect these murders had any bearing upon or relationship to the Wyatt case. He couldn't know that the two cases had meshed inextricably, and it never occurred to him that the Van Nest massacre might in any way affect the test case he had conducted for Wyatt.

He had no thought of defending Freeman and no knowledge that there was any issue of his defense or of who would defend him.

He knew little of the tragedy, beyond his wife's probing letter and the newspaper accounts, and he did not form opinions in advance of having information.

CHAPTER ELEVEN

"He That Sheddeth Man's Blood . . ."

For two weeks after Freeman was locked in his cell nobody visited him except a doctor who dressed the wounded wrist. No priest or minister called upon him. No lawyer asked to see him. No man or woman, white or colored.

Sheriff Augustus Pettibone came to the cell door from time to time, but Freeman, unaware, sat or lay on his iron cot. He was chained to a stone floor, the chain passing around one of his ankles. His right wrist was swollen, for the tendons in the joint had been cut to the radial artery, but he made no complaint of pain.

On the first day or two of his imprisonment the jailers permitted a few villagers to come to the grating of the cell door. They called Freeman names. But he only lay on the cot indifferently staring upward at the small window opening through which flowed the faint winter light.

The sheriff noticed that a smile settled on his face and that he appeared to be smiling most of the time.

But William was no trouble, either by day or by night. He ate his meals, if with no great interest then without any falling off of interest.

One night he shook his chains fiercely and knocked on the wall. He had been left without bedding, and he was calling for it. The night man brought him the bedding, and after that the jailhouse was quiet.

Then, on March twenty-sixth, two prominent villagers called on him.

The visit was initiated by the Reverend John Austin, a Universalist minister, and he had asked Village President Ethan Warden to go with him. The minister, who was an antislaver and opposed to capital punishment, knew that Warden was well acquainted with Freeman. The prisoner, when he was a boy, had stayed at Warden's house: he ran errands, he worked about the house, and finally he ran away.

The Universalist decided it was time to learn directly from Freeman whether he had been inspired by the Wyatt trial.

The Village President was the first to speak. "Bill, do you know me?"

"Yes."

"What's my name?"

"Mr. Ethan A. Warden."

"You remember living with me?"

"Yes, wish I was back there."

The town leader asked for details of the killing of the Van Nests, and Freeman answered willingly but not in connected sentences: only staccato answers to specific questions.

Warden asked the colored man what happened when he entered the Van Nest house. Freeman answered that Van Nest asked, "What do you want?"

"Warm me," Freeman had answered.

Then Van Nest said, "If you eat my liver, I'll eat your liver."

When the Village President and the Universalist heard Freeman quote Van Nest's last words they wanted him to repeat them.

"He said *what?*" Warden asked again.

"He said, 'If you eat my liver, I'll eat your liver.' "

Warden and the Reverend Austin glanced at each other incredulously.

They asked what happened next and Freeman answered, "Made a pass at him."

Then what did he do?

"Turned and fell out," Freeman answered, which was local idiom for "turned and fell dead."

What made him kill the child?——"Don't know anything about that."

Wasn't he ashamed of killing the baby?——"Don't think about it. Didn't know it was a child."

What made him go to the Van Nests'?——"Must go. Must begin my work."

What made him do it?——"The State."

They hadn't told him to kill, had they?——"Don't know—won't pay me."

Did he know these folks?——"No."

Had he been there a few days before to get work?—He had.

Did they say anything to offend him?—No.

Then why did he kill them?—"*Must begin my work.*"

Freeman readily answered Warden's questions. Yes, he expected he might be killed, but he had to do it. . . . No, he didn't expect any money. He hadn't intended to get the horse either, but . . . "broke my things—hand was cut—came into my mind—take the horse—go—and get to—could do more work."

What would he have done if he hadn't broken his knives? ——"Kept to work."

Would he have killed the Village President if they had met? ——"S'pose I should have."

And what had made him begin at that particular house? Freeman answered that he had stopped at two-three places, but thought it wasn't far enough out to begin.

Wasn't he sorry he killed so many?——"No, don't think nothing about it."

So Bill answered on, in short, choppy, disconnected, but strangely coherent answers. And sometimes he appeared hard of hearing and he cupped his good left hand to an ear to hear a question. Ethan Warden asked, "What made you deaf?"

"Got stones in my ears—got it out."

"Did you get it out?" the Village President repeated, sounding almost as fantastic as the other. "Did you hear better when you got the stones out?"

The minister looked from questioner to prisoner.

"Yes, I think I did."

He admitted that he had a pint to drink before he started for

the Van Nests'. Yet he carefully pointed out that he got over the effects of the liquor before he set out.

The Reverend Austin asked, "Did you know Henry Wyatt in the State Prison?"

No, answered Freeman, but he had heard that a man was killed in the prison. He didn't know who, nor who killed him.

"Were you in the courthouse during Wyatt's trial?"

"No."

"Did you know what the defense was for Wyatt's trial?"

"No."

"Did you know Wyatt had a trial?"

"No."

"Did the results of Wyatt's trial help you to make up your mind to go out and do these murders?"

"No."

Bill Freeman then gave two answers that surprised the minister.

"If Wyatt had had no trial, do you think you would have gone out and killed these people?"

"Yes."

"If Wyatt had been found guilty, would you have killed these people?"

"Yes."

So that suddenly Bill Freeman *did* know about the Wyatt trial even if he said he hadn't attended it.

The minister, looking for motive and knowing that Freeman had been placed in the State Prison on a charge of horse stealing, asked whether the people Freeman had killed had had anything to do with having put him in prison.

"No."

"Then why did you kill that particular family?"

Again the short utterances, deep with intent, he must begin his work, must do it, work to do.

"You think it right to kill people who had nothing to do with imprisoning you?"

"Shall do something to get my pay." Freeman answered that with vehemence, as if he were not finished with the cause he had entered upon.

The Universalist asked again about his deafness and Free-

man made the same strange reply, "The stones of my ears dropped down."

That was the way it sounded to the clergyman; that, or stones had dropped down his ears.

Continually the clergyman had the feeling of an unreality about the man's answers—mingled with a base of reality—and a powerful motive that Freeman still hadn't made clear, or hadn't tried to indicate at all. The minister was pained at what he heard. He saw a deeply agonized human being, and he gathered no meaning from what the prisoner said about his deafness.

The minister asked if Freeman had ever been to church, and the answer was yes, some, he had gone to First Church.

"Don't you think you should ask forgiveness of the Saviour for what you did?"

Freeman either didn't understand, or didn't seem to understand. He heard and yet he appeared unmoved by the minister's effort to make him feel guilt.

Had he ever prayed?—Yes.

When?—When he was a boy.

Had he prayed since he came out of State Prison?—No.

Would he promise the Reverend Austin to pray?—He would.

Would he like the minister to pray with him?—Yes, he would.

"Would you like to have a Testament?"

"Yes."

"Can you read?"

Oh, he could read. Freeman seemed eager to make that clear. He nodded his head in a vigorous affirmative.

The Reverend Austin, who had found this interview an ordeal, opened a small Bible and offered its pages to Bill Freeman.

The young colored man held the book in his left hand and helped support it with his injured hand and wrist. He fixed an intent look on the print, as if he were reading, and neither the Village President nor the minister knew whether he was reading silently or not.

The Reverend Austin turned to a chapter that began, "*In those days came John the Baptist . . .*"

"What are those words, William?" the preacher asked.

Freeman pointed at the page with his finger. He looked at the

minister. An air of certainty came into his face, as if he knew exactly what it said there.

He answered, in his chopped language, *"Holy—happy—Jesus Christ—come down."*

The two men were terribly shaken.

They had discovered that he couldn't read, and they knew that they had never educated him or any of the other colored children of the village: beyond that, the man's words indicated some deep and terrible experience which was still to be revealed.

On the way out Warden asked the minister, "What do you think?"

"I don't know what to think," the minister answered. He was a very disturbed man. He didn't know what to make of Freeman. There was a coherence and an incoherence to him. He had no guilt sense. He believed he could read but he couldn't. *He believed that what he had done at the lake was right and just.*

If the reverend foresaw any conclusion, it was one that was growing in him: that Freeman was not in his right mind.

But not all the churchmen were like the Reverend Austin.

It was the Reverend A. B. Winfield whom the village talked of, Winfield and the terribly impassioned eulogy for the Van Nest family delivered at the Sand Beach Church. It had been the greatest funeral in the county, with two thousand Auburnians and farmers of the nearby towns coming out, in a light snowfall, to the church. The tragedy had mounted; on the day of Freeman's jailing, Mrs. Phoebe Wyckoff, the fourth victim, had died; and the next day, in the packed little house of worship there were the four encoffined dead before the altar. The great overflow crowd was outside, on the snowy lawn, and they heard the reverend's powerful voice through the half-opened windows:

> *Let any man in his senses look at this horrible sight.* And then let him think of the spirit with which it was perpetrated, and unless he loves the murderer more than his murdered victims, he *will, he must confess* that the law of God, which requires that "he that sheddeth man's blood, by man shall his blood be shed," is right, is just, is reasonable.
>
> Besides, it is an undeniable fact that murder has

increased with the increase of this anti-capital punishment spirit.

It awakens a hope in the wretch, that by adroit counsel, law may be perverted, and jurors bewildered or melted by sympathy; that by judges infected with it, their whole charges may be in favor of the accused; that by the lavishment of money, appeals might be multiplied, and by putting off the trial, witnesses may die.

Why, none of us are safe under such a false sympathy as this. For the murderer is almost certain of being acquitted! If I shoot a man to prevent him breaking into my house and killing my family, these gentlemen will say I did right. But if he succeeds, and murders my whole family, then it would be barbarous to put *him* to death!

Shame! Shame!

I appeal to this vast assembly to maintain the laws of their country inviolate . . . and cause the murderer to be punished!

"*He that sheddeth man's blood, by man shall his blood be shed!*"

A few days later there was a very small, a very quiet funeral in the settlement of New Guinea. Harry Freeman, the grandfather of William Freeman, had quietly passed away—after he watched the great demonstration against his grandson.

Little was said at his graveside except that he had been one of the two founders of the village and an honest man.

CHAPTER TWELVE

What Seward Believed

"What's he going to do?" the villagers asked. "He's been back here two weeks and there hasn't been a peep out of him. And there better not be either, or his *life* won't be any safer than it was for anyone else."

Each day, as Seward walked from his big house on South Street the two hundred yard distance to his office in the Exchange Building, the neighbors glowered at him. A few snubbed him, passed him by. Some vaguely nodded. Others turned their heads, didn't know what to do. A few greeted him with the warmth they were accustomed to show to the town's leading figure. But everywhere the villagers made it clear to him—and his law colleagues kept reminding him—that he was being held more or less responsible for the Van Nest murders.

In the churches and at the clubs they were asking, "What's Seward going to do? . . . Is he going to take up for Freeman like he did Wyatt? . . . They say he ain't been near the county jail. . . . They say Reverend Austin has seen Freeman and gone and told Seward something or other. . . . Why don't the Governor speak? What's he keeping quiet for?"

Maybe Seward hoped the fury of the village would settle down. Perhaps he didn't yet realize how intimately the Wyatt case had become involved overnight with the Van Nest murders. Maybe he knew, but didn't know what to do about it. He was like a captain in a rough coastal sea, looking for a port. He told his

friend Thurlow Weed of the violent village sky. The Auburnians were all mad at him, he wrote, because he'd defended Wyatt so ardently. It was coming out now, the resentment they felt at his peering into prison affairs. The Van Nest murders had hardened them. There was a flagrant mood at large in the town, and a man's life might be in danger. God help them to a better morality, he prayed.

Then, all of a sudden he was gone.

The townsmen were incensed when they read the news note in the local papers:

SEWARD TO THE MISSISSIPPI

As if nothing was happening at all. Just like that, a pleasure trip westward! That angered them even more. How the devil could he leave without letting them know what he intended to do about Freeman?

They were affronted. Right in the middle of the most historic incident in the life of the town since its founding—and he dared to be away. Dashed off a massacre as a mere incident, kept quiet about it—and left!

On the evening of April sixth, when the Auburnians were mostly inside their homes, Seward was driven to the railway depot. In his suitcase were several books that might help him later in the retrial of Wyatt: J. C. Prichard's *A Treatise on Insanity*, Jean E. Esquirol's *Mental Maladies*, Samuel Tuke's *Description of the York Retreat*, and Isaac Ray's *Treatise on the Medical Jurisprudence of Insanity*. They had been sent to him at his request by Dr. Amariah Brigham, director of the Utica State Lunatic Asylum. Brigham was possibly the outstanding authority in America on "the mysteries of the mind." Seward knew that when the Wyatt case resumed, he'd need to know more of these "psychical" subjects than he already knew . . . and there'd be moments on shipboard, on trains and in hotels when reading would be a recourse.

He had long wanted to see the Mississippi. "A dream of my life," he called it when he said goodby to Fanny. Now he had an interlude and an excuse: the second trial of Wyatt was nearly two

months away; the fever about the village over the Freeman case was unpleasant and it would be good to get away from that; and besides, he had a patent case due to come up in a Cincinnati court a week or so later, and he had to go that far west anyway.

Actually the practice of law didn't fundamentally interest him. It was a way to make money, however, and so he conducted his legal practice as diligently as he knew how. His real love was public and political life, and the pursuit of the philosophy and culture that made it possible for him to maintain a dominant position in party politics and public affairs. For to lead a party in those days men had to know Shakespeare, Cervantes, the Bible and the history of British politics.

Men entering upon the political stage had to contend in scholarship and statesmanship with the giants: Jefferson, Hamilton, Madison, John Adams, Marshall and the other founding fathers, some of whom were still alive when Seward was born, and the men of Seward's own time, Webster, Clay and the growing Lincoln, took their departure from these masters.

Seward wanted a life of public service. He wanted to be regarded as a great man, and he thought of himself as such. He might make errors of public judgment—he'd make a big one fifteen years later when the Civil War broke out by working, at first, for compromise between the North and the South—but his motive would always be the same: the preservation of the Union and the strengthening of it.

He'd combine this trip westward with meeting certain Whig leaders. He was a Whig and the Whig faith was tottering. Northern and Southern Whigs looked differently upon slavery. Western Whigs had their special outlook on the extension of slavery, and Seward felt that everything ought to be done that could be done to hold Eastern and Western Whigs together. A break was coming between Northern and Southern Whigs on the Oregon question, too, and he might be able to prevent that if he met some Southern Whigs and softened their sentiment. Besides the Oregon question, Seward wanted to know what Western feeling was about the threatening war with Mexico over Texas. He was opposed to a proslavery war that might weaken the Northern industrial force. A financial con-

servative, he believed that the ending of slavery and the development of a free-labor society throughout the country would give the nation its true power.

He held that young United States had reached a new stage in its career, and he was outspoken over this in public addresses and in correspondence with political figures. "It is that of territorial aggrandizement," he said, "and the people have instructed the President to maintain the American title to the whole of Oregon." It was only 1846, long before the Civil War, and long before Seward engineered the purchase of Alaska, but he wrote, just before taking this trip to the Mississippi: "Our population is destined to roll its resistless waves to the icy barriers of the North, and to encounter Oriental civilization on the shores of the Pacific." The acquisition of Oregon was only a step in that direction. A natural step and nothing to hesitate over, he said. Neither President Polk nor Congress should hold up on that.

In the interim the big national issue was "to dare to qualify ourselves for our mission, to dare our destiny." That, he believed, was the abolition of slavery, without injustice to slaveholders and without civil war, but with the consent of universal opinion, "and the approbation of Heaven."

There was, he was saying to anyone who would listen, an opportunity in New York State right now to advance these purposes. The issue of suffrage for freemen was before the State Legislature for possible incorporation in the State Constitution. The right of freemen to suffrage must be implanted in the Constitution as the first act in a national drama that must lead to "the sublime catastrophe of emancipation." That would make this state stronger than all of the other twenty-eight states put together. "It is slavery 'doth make cowards of us all,' " he said, drawing as freely as the other public men of that day on Shakespeare.

These were his fundamental views as he went westward . . . to further them.

He couldn't know, as he moved across the country, that personal and political events in his own life, during his absence and upon his return to Auburn, would greatly overshadow the current statewide issue of suffrage on which he counted so much.

CHAPTER THIRTEEN

The Furious Village

While Seward went west, District Attorney Luman Sherwood took a trip east—to Albany.

He went straight to the office of Governor Silas Wright in the Capitol Building and told him the whole story—how the insanity issue had broken in their town in the Wyatt case, and might come up again in a larger way through the Van Nest murders. They had indicted Freeman for murder, quick work before twelve jurors, and he was charged with breaking the peace and dignity of the state, premeditatedly murdering John G. Van Nest "with a certain knife, of the value of twenty-five cents." But Auburn needed help. How settle the town down? What would the Governor do?

The Governor decided on two steps: he ordered a special term of Cayuga County Court to try both cases, beginning June first—and he directed Attorney General John Van Buren to go to the village, take over the people's case, help Sherwood and anybody else—but defend the people's interest against the harebrained ideas of the former Governor!

It was a lift for the villagers when Sherwood returned with the news that the State's Attorney General was coming to their aid. It led to a furious heightening of the sentiment against Seward; and little else was talked of but the ex-Governor, and what he'd do about Freeman when he returned, and what had to be done on the Wyatt case. The entire town, in a monolithic reaction, wanted

Wyatt hung, wanted the issue of "moral insanity" crushed forever, wanted no one to suggest the possibility that Freeman might be insane or defended on such grounds. The idea was rash, dangerous, unthinkable and an affront to decency and good order.

From then on whatever they had against Seward, anywhere in the community, began to come out. They were "throwing the book" at him: his antislavery views, his ultra-advanced notions about "moral insanity," his reform positions on other public affairs—they were all aired in the streets, in the homes, in the meeting places.

Many didn't like the fact that he was an anti-Mason. (His anti-Masonic views may have cost him the Presidency in 1860; some said that was the determining issue in the switch to Lincoln.) "Why, did you hear what he did a few weeks ago in Albany?" No, what? "He addressed the Irishmen on St. Patrick's Day, and he said that English rule for Ireland was no good, and the Irish ought to rule themselves." Others had an explanation for that: "Well, you know, his mother is part Irish."

(Seward's views about foreigners, immigrants, minorities, were discussed all the days of his life. He denied that patriotism meant an American had to have prejudices against other nations, other groups. He believed that America, born of Europe, would continue to grow and thrive by increase of the elements to which it owed its origin. A German association elected him an honorary member, and when he wrote to thank them he spoke of German contribution.——And to the Scotch: "I owe a debt of Scottish hospitality, which I should be most happy to acknowledge at your festival."——To the Dutch, inviting him to a St. Nicholas feast: "Holland has been the rival of the greatest states in arts and arms."——And to the English invitation to a celebration of St. George's Day: "My sincere congratulations upon a prospect of the continuance of the relations of peace and friendship between America and England." And so toward all nations and colors and groups, as he said in a letter to a Philadelphia organization: "It seems to me that there is enough of national interest, of national ambition and national pride, in this country, to enable us to banish all sectional feelings and all hereditary prejudices. . . .")

The prison officials were elated to hear that John Van Buren was coming to town to take the thunder away from Seward. Prison Keeper Ulysses Doubleday was a worried man: "You'd think the redhead would know better than to meddle into prison affairs, what he don't know about. You'd think he'd leave prison administration to us, where it belongs."

The prison interest was a mighty voice in the village: a vested power, and now it was on trial. Wyatt had committed murder inside the walls and Freeman had engaged in massacre only a few months after being released. Every few years there was a prison scandal that aroused the Auburnians and placed the prisonkeepers on trial; here it was again. In the Wyatt trial Seward had revealed how they punished prisoners, and many villagers had been moved by his exposure. The officials didn't want to be under fire, and Freeman's murders had somehow thrown the prison into focus as the community's leading industry.

Throughout the village there were Whigs, men who had supported Seward for more than twenty years of his public life—and now they were withdrawing. But the more they tried to disavow support of their leader, the more the political opposition howled, "There's the Whigs for you, defend murderers! That's the Whig Party!" The corps of villagers who had helped originally to send him to the State Senate, campaigned for him for Governor and helped elect him, withdrew their friendship. Hundreds who had paraded in the streets for him, and held up banners and flares on Election Eve campaigns, were just as willing now to hold him up, in effigy or in reality, in some tar-and-feather demonstration. That was the simple solution of Police Chief Tom Munroe, and he went about proposing it: "Damned Governor ought to be tarred and feathered! Gets back to town, let's tar and feather him!"

Political rivals, Democrats, envious of Seward's power and abilities and his rise to the Governorship and fearful he might yet come back into official life, whispered to one another, "Now we got him! He's bit off more than he can chew! Wait till Johnny Van Buren gets here! The young fox'll take care of Seward!"

And they waited for his return, so that, in a way, Seward, absent from the place, may have been a presence more deeply felt

than if he had remained. It was like the temporary absence, behind the scenes, of the main actor. All of a sudden he'd be back, onstage, and leading the show.

The mood of violence that steeped the village fanned out to adjoining counties and even went over the whole state. In nearby Seneca, Onondaga and Oswego counties there was almost as much interest in the developments as there was in Auburn. From Buffalo across the whole Red Jacket Trail to Albany, and down as far as New York City, the antipathy to Seward spread. "Where'd he get the cussed idea murderers ought to be let off?"

In a matter of weeks Whig influence over the whole state fell off sharply; the Democrats gained strength and they joined with defected Whigs to lay in wait for Seward's return, and then destroy him politically. Everywhere the great whispering campaign went on, and Seward's opponents dug in, in a kind of humming fury, to wait for the great events coming.

Meantime the political opposition circulated in every town in the state a printed version of the Reverend Winfield's sermon at the Sand Beach Church. Thousands had been printed, sent everywhere, and even distributed in churches. Wherever people didn't like the antislavery or the anti-capital-punishment voices, they were reading, with conviction, the Reverend Winfield's implicit denunciation of the ex-Governor and praying for a quick hanging of Freeman.

Here and there a calm voice said, "Let's wait," or "Let's look into this," or "Wait and see what Seward does before you condemn him."

A few Auburnians, privately—but very privately—stayed in sympathy with Seward. Not because they didn't regret and mourn the Van Nest deaths, but they suspected some kind of principle really was at stake here. They were the principle-minded people: a few ministers, a Whig or two, Seward's father-in-law, Judge Elijah Miller, and a few abolitionists.

The Reverend John Austin wrote a letter to the *Auburn Advertiser* in which he spoke of the neglect of the colored population of the village. He implied that the town was, to a certain extent, responsible for the crimes just committed in their midst. The

minister asked whether this neglect might not even be a legitimate cause of the crime, of which the Van Nests were the ultimate innocent victims.

Part of the community shock stemmed from the love which the Auburnians had for Owasco Lake itself, for its shores, the cottages along its sides, the sand beaches, the shallows where they went wading in the sunny weather. In this lake they caught perch and pike and trout, and over its surface they guided their canoes and rowboats and sailboats; and the summertime of the villagers revolved around these pleasant recreations.

Now a kind of moral grayness settled over everything. Spring was here and the people, who at this time looked forward to warm days about the water, couldn't visualize the lake without realizing what had occurred on its western shore—and something of the beauty of the place had been taken away.

Seward himself loved Owasco; it was his favorite place for a fishing party, a picnic, or for a horseback ride along the shores. Often, at the lake with his children, he'd join them in the simple activities: swimming, skipping stones, hunting odd flowers along the beaches, taking the shade under the trees whose great branches overhung the green water. Sometimes Seward visited his friend, ex-Governor Enos Throop, who had a cottage there. And if Seward's children were with him on such a visit, he'd tell them how the Indians, in a time gone by, had worked out the paths along each shore and had lived here and fished and hunted deer.

So the lake was part of each Auburnian's life—as it was now part of the Van Nest deaths. All of which made people angrier at Freeman, for he had bound the life of the town with that of the Owasco waters inextricably tighter, tragically closer.

In the large square mansion of unpainted brick on South Street where Fanny Seward waited for her husband's return, there was a mood of anxiety.

Though the house was shielded from the rest of the village by a row of Lombardy poplars in front, the surrounding grove of locust and apple and cherry trees and the lattice fence that bordered the house from the sidewalk, the town's anger seeped through.

Law colleagues of Seward came there in the evening—Blatchford, Morgan and Wright—and they told Mrs. Seward how the town politicians plotted against her husband. "It's too bad he went away just now," they said. "He should have stayed here—and not let them get the jump on him in whatever's coming." There were unceasing threats to raid the jailhouse and string up Freeman, they reported; and there was a decision, openly bruited in the streets, to send Wyatt to his death soon. "Let the judges know!" the villagers said in rage.

And the lawyers told Mrs. Seward, "It's just as well if your children stay off the streets."

CHAPTER FOURTEEN

In the Youthtime of the Country

Through her husband's letters, it was possible for Fanny Seward to share vicariously in his trip to the Mississippi. It was the only way she could see the country, for domestic duties and uncertain health held her to Auburn. The five children she had had, four of whom were alive, had been a great drain on her and had left her frail.

Their one daughter, Frances, was only two years old, and there could be no traveling with an infant. Moreover, not long after her marriage Fanny had taken ill, and she remained chronically ailing, though in no real way incapacitated. She could raise her family, read broadly, work in the garden, entertain friends, and help her husband. But travel was unwise, even impossible, and from time to time when public affairs took Seward away from the village, he went alone, and she remained on South Street. So she learned to expect detailed accounts of the countryside and of his experiences.

This journey gave him a sense of the youthtime of the country, and his letters pictured the still wild and rugged terrain, the effort of towns to grow, the verdure, and all of it reinforced his belief that much had to be done in a thousand ways in every occupation and profession to build the nation. It added to his feeling that America was destined to roll ever westward until its interests reached the other side of the world.

"What a change will a century bring over this bewildering

scene," he wrote from St. Louis; but his letters, written almost daily, had begun long before he reached that place:

Erie, Pa.: Beloved . . . The voyage from Buffalo here was obstructed by ice in the harbor, and a high wind which arose as we approached this port. The boat was small and I was glad to part with the capricious god of the shallow sea. *Pittsburgh,* April 11: The friend of national industry can find no place on the continent, I think, more full of interest. There are eleven large foundries where iron is cast in every form of utensil, or is rolled and manufactured. . . . I went through an extensive glass-manufactory yesterday. . . . I have had a walk through subterranean coal-fields. *Steamboat Hibernia, on the Ohio,* April 15: The boat, *Hibernia,* descending from Pittsburgh, received us last evening at sunset in a rainstorm. Night soon closed in upon us; and, when I awakened this morning, we had passed Blennerhasset's famed island, Marietta, the cradle, if I remember rightly, of Ohio. We are now below Cape Henlopen. The weather is damp and uncomfortable. The forest is yet dreary, but the elms, willows, and sycamores are green; the peach-trees and cherry-trees are in full blossom. We are promised that we will reach Cincinnati tomorrow morning in time for breakfast. *Cincinnati,* April 19: Cincinnati is a great town, a beautiful city. It is Rochester tripled in population and in proportions. I think it numbers eighty thousand people, and swells every year. I have seen many of the gentlemen of all parties here, and they are very civil. I am, moreover, engaged in Wilson's patent-business, which exacts much time. The people of Cincinnati have been exceedingly kind to me. *Louisville,* April 26: We set out for Lexington, sixty-three miles distant. We traversed a land of unequalled fertility, over a road of great smoothness and beautiful curves. At Lexington I soon became "well acquent" with Cassius Clay. . . . We found Henry Clay, just arrived from the South, healthy, vigorous, gracious, and impressive. He is evidently looking forward again to another trial for the presidency. I wish you could see the forests of this country at this season. There is a heavy growth of beech and maple; but the woods are embellished with flowering trees, the white blossoms of the buckeye and the dogwood, of the wild cherry and the wild plum, mingling with the brilliant purple clusters of the Judas-

tree. I leave tomorrow for St. Louis, and from that place I descend to New Orleans, and return home by way of Washington. *Vincennes, Indiana,* April 29: . . . Sitting on the bank of the Wabash, waiting for stage, which will carry me over the prairie to St. Louis, with a digression of fifty miles to the home of the Sewards, in the centre of Illinois. *Vandalia, Illinois:* . . . Today I have traversed the Grand Prairie. Its expanse and its greenness, its scattered small groves looking like islands, and its solitary trees looming up like ships on the sea, have filled me with delightful amazement. Cattle and horses roam the prairies with apparent freedom; the dove, the sparrow, the clamorous jay, the shrill lark, the wren, the blackbird, the oriole, the prairie-hen, the quail, the pheasant, the wild goose, the turkey, the buzzard, and how many more I cannot remember, dwell peacefully on its broad expanse. . . . Heaven bless you, sweetheart, and Fred, and Clarence, and Willie, and the wee one, and grandpa, and preserve you and me, until I meet you and recount the wonders of "my journey." *On the Mississippi, below Memphis, Steamboat White Cloud,* May 8: Arrived at Hillsborough that evening, a pretty flourishing, country village, and a pleasant contrast to all I had seen in Indiana and Illinois. . . . I took leave of all these affectional kinsmen and kinswomen, and, departing with Butler Seward, in his great market-wagon, filled with brooms, deer-skins, and dried beef, not forgetting supplies for ourselves and horses, I set out for St. Louis. . . . The prairies . . . these great meadows were of various widths . . . enameled with flowers, and their wild inhabitants started continually from before us. . . . As soon as I appeared in the Planter's Hotel at St. Louis a half dozen not unfamiliar voices called, "How do you do, Governor Seward?" *On the Mississippi,* May 9: The river is unlike anything I have ever seen. The waters are turbid, strewed in all directions with logs and drift-wood, green as well as dry. . . . I trust the excitement over the Van Nest tragedy has subsided . . . have been reading on this six-day-long journey down the river the works of the fascinating Esquirol, also Isaac Ray, that these shall help me with Wyatt when that matter shall be adjudicated. *New Orleans,* May 13: New Orleans and all Louisiana are filled with martial excitement, arising from the breaking out of war in Texas. Everywhere trade

seems at a stand-still. Here flags, suspended from the windows, sweep the ground with a proud defiance of the Mexicans. The Exchange is nightly crowded with mass-meetings, inflamed by the oratory of patriots, who seldom forget to stimulate volunteers through the lust of conquest and of spoils. Companies of volunteers parade the streets. You wake to the music of the drum and fife, and put to rest at midnight by the undying notes of the same clamorous instruments. . . . I shall follow this letter within two days, straight and fast. . . . Darling, when I am away from you I am as a banished man——Henry.

CHAPTER FIFTEEN

"There Is Some Very Great Drama Here . . ."

Early one evening in the latter part of May, when the lilac smell was heavy over the village and the grass in the yards was high and fresh-looking, and the sun had just gone down, the villagers began crowding into the town center. They were excited over two events: the reports on the war with Mexico and the news that William Seward was coming home that evening. On the previous day the *Advertiser* carried the headline:

GOVERNOR SEWARD

EXPECTED TUESDAY ON THE 7:12

He Has Been to the Mississippi
and New Orleans

It was a warm evening and they strolled Genesee Street and looked into the shops or read the Bulletin Boards in front of each place listing what could be bought inside. It was no time of specialty shops; the stores faced the people simply, without lights and grand window displays. Only a bulletin in front of an establishment listed: Tea, Coffee, Sugar, Cheese, Tobacco, Dry Goods, Gin, Rat Traps. A pound of nails or a silk dress—they were inside and could be had for barter or cash, sometimes credit.

Suddenly a half-dozen newsboys were running about Genesee Street. They carried an extra issued by the *Advertiser:* there had

been victories at Palo Alto and Resarca de la Palma. The townsmen exulted over the victories, but turned anxiously to the columns of dead and wounded to see whether anyone from Cayuga County was listed.

In the midst of this main street excitement Seward returned. His train screeched to a stop at the depot on State Street directly in front of Auburn Prison.

When he got off the train, members of his family and a group of friends clustered about him protectively. Fanny Seward was there, and her father, Judge Miller, and Seward's oldest son, Augustus Henry. They had come in the family carriage. But four or five other wagons were there, and in them Seward saw his law associates, two or three of his remaining political supporters, and a few old friends. This group gathered in a close and tense formation about him.

Seward noticed others hanging about the depot, villagers who merely stood and looked and stayed distant.

"Why all the fanfare?" he asked his wife, holding her closely for a minute, yet not too demonstratively.

"Augustus has been stoned . . . !"

Seward looked at his son. Augustus looked unharmed.

Mrs. Seward held his arm nervously. "We've come to see you home before they. . . ."

He finished shaking hands with his law partners while they pressed him rapidly toward the large Seward carriage. His old friend and law associate, the middle-aged David Wright, said, "It isn't too safe, Bill, or we wouldn't come like this to fetch you home. They're all out. Genesee Street is filled with them tonight. The Mexican news has brought them out. And when they're not hating Mexicans—they're thinking of you . . ." No telling what might happen, they said; the town was gloomy and nasty and moody.

Samuel Blatchford was saying something that Seward listened to with a feeling of unbelief. The tall, scholarly-looking law partner, always serious, now was especially so. "The only way we could keep them from burning your house was to tell them you wouldn't have anything to do with Freeman when you got back."

"Who authorized you to tell them that?"

Blatchford smiled. "We authorized ourselves. . . . You don't intend defending him, do you?" he asked.

"I don't know. I just don't know."

"Your life is no safer than his—if you do."

Seward was silent, and Blatchford persisted. "It's a thankless job. Not even the local Whigs'll stay with you. You'll wreck your whole political career . . . everything you ever built. They'll forget you were a two-term Governor of this State."

Two buggies, with Seward's friends, went on ahead of the family carriage. In one wagon was Village President Ethan Warden, just to see that no harm befell the former Governor. Behind the Seward vehicle there were two one-seaters, a fringed surrey and a democrat wagon. A number of young Whigs, an informal bodyguard, sat in the last vehicle.

It was only a short trip to the Seward home and the horses clattered swiftly through lamp-lighted State Street. The villagers were out, on the sidewalks, and they saw the cordon carrying Seward rapidly toward his home.

Then Seward, who had brought so much honor to the town, had one of the most astonishing moments of his career. Along the sidewalks he saw and heard the townsmen. They spit and they hissed. They cried out: *Damned Governor! Dirty redhead! Crazy lawyer!* They shook their fists, and two or three stones hurtled toward the fast-moving caravan.

Seward looked at his wife beside him in the carriage. Fanny seemed frightened. In the semi-light he touched her wrist.

There was no fear in Seward, only surprise, and he merely murmured, "I can't believe it." For a townful of enemies had no great fears for him. He was used to opposition, steeled. He had not forgotten that when he had finished his second term of Governorship, in December of 1842, he felt that he had somehow survived a political period in which he had made thousands of enemies. Hundreds had causelessly hated him, he said at the time. He had had the experience of unavoidably or even imprudently offending some people, and he had earned enmity. Yet somehow, mostly with the aid of his wife, he had surmounted this.

Now, with his wife again supporting him in a new crisis, in an hour when he felt hostility everywhere, he had a replenished

strength for the present ordeal. The westward trip, the change, had been refreshing. And his experience of a lifetime in public affairs, his knowledge of what he could expect in a big fight—that sustained him. . . .

The cordon of carriages turned swiftly into Genesee Street, passed the Exchange Building, and then moved spiritedly the last two hundred yards to the Seward grounds.

Seward awakened early, his usual custom when he was at home. At half past five, when the sky was still red with the rise of the sun, he went out of the side door into the five-acre recesses of his property to see what was growing. He headed first for the vegetable garden, and there he saw that the cucumbers had begun their ramblings and the radishes had gathered roughness on their leaves. He went to the grape arbor, and the sap had started from the grapes. The arbor was all shaded and there was a workbench in the center where he did much of his studying. It was cool and dark in the arbor and he went through it onto the broad lawn. The polyanthus was in full bloom; he stopped to look at it. Everywhere the grass had sprung to green life; scores of birds sang up the acreage: robins, sparrows, bluejays. From a few trees, there hung birdcages and the caged birds chirped. There was color along the lattice fence and the hotbed was flourishing.

Deeper in the yard was the big green barn, and there were horses inside. A stableman took care of the horses and of the barn. Seward was no judge of horseflesh, and the only pleasure he took in the possession of horses was that a horse could get him safely and rapidly to one of his friends or to a public event. He glanced at the barn, watched the stray cats that scampered across the property, for the Sewards fed all the stray cats and dogs that came their way. He wandered around in front of the house, looked it over.

Steadily he was improving on the place, enlarging it. For the last three years, since the Governorship, he had regarded the care of his house and yard as one of his main occupations. While he had been away the whole property had somehow gone down, but since his return to Auburn he had restored the beauty of the house and the grounds. This had helped him to restore his strength, too, for

public office had drained his energies. He had done hard manual labor on the property. Helped to drag up huge trees and to transplant them around the house. Trimmed the stately locust trees which were being destroyed by some black and horny and destructive insect that had been causing all the locust trees in the county to droop and die. Sometimes too much sun injured the trees, and sometimes flood and spring thaw undermined them, and so he had occupied himself in nurturing the growing things over the whole broad stretch of his property.

He stopped in front of the house to see how it looked from the street. He had built a high green fence about the grounds. Two square columns of rough stone were erected at the sides of the gate, and a gravel walk led from the sidewalk up to the entrance of the house. The place gave an over-all effect of being sheltered by a mass of surrounding trees and of green growth.

He walked about again, the scent of lilac everywhere, glancing at the fruit trees he had planted, examining the bright yellow flowers of the crocus, the gooseberries in leaf.

These outdoor habits clung to him from his farm childhood. As a boy in Orange County he had driven the cows to pasture early in the morning and back at night; he had wood to chop and bring in, and he had to help plant vegetables and seed corn rows and care for fruit trees. Work in the open had given him strength and a love for nature, and when he grew up and the Miller estate was his to work on, he never stayed long away from the earth.

He had come into all of this and helped expand it by "the deal" of his marriage. Old Judge Elijah Miller who had established this place had, more than twenty years before, told Seward he could marry Fanny provided she stayed on in the house. The bridegroom had to move in, and he did, and that was one of the details his enemies always brought up: he'd married right and well. But it was William Seward's home now, and the ex-Governor got no pleasure out of hearing that there had been a suggestion the place "ought to be burned while the Governor's away."

In the afternoon the lawyer strolled from his home the short distance to the County Jail at Court and Genesee streets. The sheriff

took Seward to Freeman's cell and called through the bars, "Bill, the Governor wants to see you."

Freeman was standing erect, with arms folded. His head drooped a little and though he was near a window and could have looked outside, he did not. The sheriff said that of late he held this posture most of the time, a pose of statue-like stillness.

"He stands like that all the time, Governor," Sheriff August Pettibone said. "Come here, Bill; face about, it's the Governor."

Freeman gave Seward a calm, quiet look, which then altered ever so slightly, as if he were about to burst into laughter. Instead a steady smile settled on his face and it stayed there, and Seward, inside the cell, stared at this smile.

The ex-Governor was struck at once with the fixed quality of that smile.

He had been told by others that Freeman wore this smile all of the time. The lawyer, who had studied the ethnology of that time, an ethnology that recognized the varying characteristics of the African, Indian and Caucasian, examined the prisoner's features. Freeman had the facial shape of the North American Indian, and mixed white and African coloring. In the rigid classifications of that day and in Seward's mind, William Freeman was a "quadroon." He was about five feet and seven inches, he had a broad chest, he may have weighed no more than one hundred and fifteen pounds, but he was of muscular build.

The lawyer asked questions and he listened carefully to the replies. He asked about the murders, why had they been done? Who had visited him? Was there anything he wanted? Why did he do it?

Freeman answered only as he was questioned, with yes and no replies, abbreviated clauses, speaking in no connected sequence, but responding only as he was pried.

It dawned on Seward that Freeman had no knowledge of the situation he was in. He was ignorant of it and indifferent to it! The Negro was in some limbo-like condition of the mind, capable of such communication that, if men wished to believe him sane and sensible, they could extract sensible meanings from his replies. But if they understood anything of the signs of degeneration as

understood even at that time by students of the mind and of brain disease, here were all of the advanced signs of insanity.

A mood of astonishment came over Seward as he stayed on with Freeman for a full hour. His amazement was that in that year, "In the year 1846 of Our Lord Jesus," as men often put it, society was preparing to try as a deliberate murderer a man who was barely above the level of idiocy. Here was a shambles of a man, all maniac at the climactic hours of his life on Owasco Lake, and the rest of the time incoherent and apparently rapidly declining. *What was his disease?*

Seward could not see the brain in Freeman's head. But he believed that that brain was in some condition of disease. There was no way of proving this medically, by instruments or photography, by any mechanical means, nothing but by Freeman's behavior, and this would be debated, as it had already been. The more Seward looked at the prisoner the more he was struck with the fact this twenty-two-year-old was more like a man of sixty! He was already aged, marked with debility, as one who has lived a lifetime though still in possession of the physical frame of youth.

An emotion of intense pity swept through the ex-Governor as he fully realized the deaf, lonely, deserted and ignorant nature of the man before him, and the meaning of the vapidly smiling face.

"There is some very great drama here," Seward said to himself, "and I must find out what it is."

He could not find out from Freeman.

Yet as Seward left the jailhouse he was unsatisfied with his own interview. Perhaps he was wrong. Perhaps he was anxious to defend a principle, too anxious, and he might be wrong. He knew that in no court here or in England had there yet been a thoroughgoing test of murder on grounds of insanity, no acknowledged trial that jurisprudence could use as a distinct precedent.

He, Seward, had come closest to this in the Wyatt experiment.

But now suddenly the Freeman case dwarfed Henry Wyatt's.

Freeman was so much more obviously insane than Wyatt. Wyatt's case, that of a stranger committing a murder in the prison, had been one thing, an issue of technical interest in the town—but

here was *one of their own,* a black man, and the killer of *four of their own*—and the passion and interest were tremendously magnified. Everything was magnified. Freeman's case already contained in its outlines the deepest significance: it bound sanity, murder, antislavery and capital punishment into one tight knot, and it even struck into party lines: for if he moved to defend Freeman there would be, Seward knew, a new crisis in the ranks of the Whigs.

He would stand alone.

His family would support him, and doubtless his law colleagues, and back in Albany his ardent friend Thurlow Weed would privately support him while publicly remaining quiet . . . but no one else, save possibly a few helpless abolitionists; for the rest . . . he would have to face up to a hostile town and state.

Yet here was the man—Freeman—whose imprisonment illustrated the principle Seward had long wanted to test . . . and here was the town in which to try it. It was a time in national life when the amorphous and pioneering world of mental hygiene sorely needed a victory. In the Wyatt situation, he had challenged this uncharted area, but in the overwhelming repercussions of the Freeman murders, he faced, whether he liked it or not, a newer, a clearer, a fresher instance of the same thing, complicated by antislavery and color.

He could not easily contend with one case and ignore the other. They had united simply and clearly, like two arms on a single person.

Moreover, an hour of decision was upon him. Wyatt's retrial was coming up in a few days, and the arraignment of Freeman would occur simultaneously.

The village looked at Wyatt and then at Freeman and then upon Seward. There was hardly a way out of it.

These were his musings as he went to his office. Then he made several moves. . . .

First he asked his law associates to go to the jailhouse and see Freeman. Was he wrong to believe Freeman was a poor, demented idiot, who should be adjudged insane at once and never even have to go to trial? He wanted other opinions.

"Get the word about to some of our friends," he said, "—if

we have any left. Ask them to see Freeman and let me know what they think."

Next, New Guinea had a visitor. . . .

The colored settlement, a handful of houses along a hilly street and an intersecting loop, was lost in woodland. Maples towered over the small houses and now the trees were in foliage. A dirt road straggled before the houses: it was a narrow rutted way, with gutters of weeds at each side. On the side of the street where most of the houses were located there was a narrow strip of sidewalk which was mere trampled earth, with weeds and grass trying to break through where footsteps always held the green growth flat. Beyond the footpath there were a scattered dozen shacks, one or two rooms to a shack.

As the word traveled swiftly from house to house that "the Governor" was at John De Puy's house, the Negroes quietly walked across their weeded fields or moved along the green tramped path to the De Puys'—to help the great man who, they hoped, would help them—the man who alone might try to tell the white folks how things came to be, and free their souls from the impossible burden of embarrassment that Bill Freeman had brought to them.

Seward had Charles Parsons with him to take notes, and Parsons scribbled every fact as rapidly as anyone answered a question Seward asked. The lawyer sought of the friends and kinsmen of Freeman the story of his origins. Where had he worked and with whom? How old was he when his mother first "gave him to service"? What he thought and said and how he acted and who knew him as a child, as a growing boy; and what was the story behind his imprisonment for the theft of a horse he said he never stole? What was known of his years in the State Prison? And who had seen him in prison? And what had he done after he came out, before the murders?

Hundreds of questions—hours and hours of questions—with Seward intending to return each day until, out of the answers, he could put together the story of the fragmented life of Freeman. How little any one person knew of Freeman! thought Seward. Yet how widely over the village this life had been scattered and splin-

tered! How curious that everyone knew something of Freeman and nobody knew the whole broad story.

Somehow, if he *had* to defend the man, and if the case *did* go to trial, he must reconstruct this decimated life so that its full course —and what it led to—became visible to the whole community.

CHAPTER SIXTEEN

Fanny Seward in the World of "the Unthinkable"

The kitchen and dining room of the Seward home were in the basement, below the level of the grounds. The cooking was done in a huge stone fireplace in the kitchen. It was so big that a small tree could be burned there. Swinging iron arms with kettles on them could be turned in and out of the flames and the coals. The iron arms were long enough to hold a half-dozen kettles so that a big meal could be served up to the master of the house "nice and sweet and hot" the way he liked it.

When the food was prepared it was handed through an opening in the wall, shoulder high, into the dining room. That room, bigger than the kitchen, was cool; it had two windows high up on the east wall to let in air and light. It was a plain room with unpainted walls, a high mantel on one side, a long butternut table in the center, and plenty of butternut chairs about it for all of the Sewards and any guests.

There were no guests on the evening of the day when Seward saw Freeman and first visited New Guinea. It had been a family dinner, and after the children were gone, he and his wife sat at the table and talked about what had to be done.

Possibly Seward's mind was already made up, but he felt that he ought to be sure of Fanny's support. This was, after all, an Auburn situation: their home was here, their son had been stoned, their life in the community was jeopardized. The house they lived in had been built long before, in the years 1816 and 1817, and it

was worth preserving. They were taking a chance on some kind of permanent social ostracism, and this certainly involved his wife and family.

True, Fanny herself had hinted at insanity in her letter to him when he was still at Albany, and each evening, during the winter, they had talked over the developments in the Wyatt trial. She had researched in the writings of Pinel, Esquirol and Prichard, Guy, Ray and Taylor, and she had marked significant passages that he quoted in court, and her suggestions had become vital aspects of his defense. Her stimulation and her guidance had been a vital part of their relationship and his reliance ever since the days of their courtship.

Seward had been twenty-three and she only nineteen when they married. They had fallen in love four years earlier, when Frances Miller was only fifteen and still a student at Miss Willard's Seminary for Young Ladies at Troy. Seward met Fanny through his sister, who also went to Miss Willard's school. One spring vacation time his sister had brought Fanny to their home in the village of Florida. Young William, then a student himself, liked the lean girl whose modesty amounted almost to timidity, especially when he discovered that her outer quiet concealed a turbulently interesting young woman. She had had an intensive education, first in a Quaker school, then in an academy at Windsor, Vermont, and latterly the Troy finishing school. She had emerged from that training knowing literature, something of politics and history, and with a profound interest in the state of science.

Seward sat at the table, the dishes taken away, his wife opposite, and he was smoking a small foul black cigar. He smoked them frequently; she didn't like the odor, but never let on by word or sign.

He told her of his attempts to question Freeman, how the man had answered in choppy, incoherent sentences, but he *had* answered. He seemed to have very good memory, but no possible moral realization of what he had done—beyond a belief in its rightness. Freeman had used the same expressions with Seward as he had with others: work to do . . . kill round awhile . . . you know there's no law for me . . . they say I stole a horse but I didn't do it . . . want my pay.

Fanny knew what her husband was leading to; he always went into detail in that manner when there was a course he wanted to take and searched for her approval.

"It seems to me we're committed through the Wyatt case," Fanny said.

Seward felt better. She was with him, whatever it might bring.

There was no doubt of it, the lawyer agreed: if Wyatt was insane, Freeman was ten times more so. To defend one and to ignore the other was to retreat from the principle he had initiated. Developments had been such as to make inevitable this town and this time—and these two cases—as the Valley Forge of the question of insane murder. He *must* go ahead with it.

"It's not alone that, Henry. They are blaming *you.* They are holding you responsible."

"There *is* a question of self-vindication," he admitted.

She would never have believed, she said, that the community could hold him accountable for the Van Nest massacre merely because they said that Freeman may have attended the Wyatt trial.

"When a community is sick with hysteria, Fanny, any idea is possible."

"But this one is *unthinkable*——!"

"Fanny, you can be sure of one thing in this world of undiscovered meanings. It is the unthinkable itself which is truly the thinkable. I have found it so in politics—and I suspect it may be so in the sciences and in all life. It is in *that* mysterious recess alone where the truth most often lies: in the paradox and the anomaly, in the contradiction, in the unthinkable."

But Seward hadn't yet placed the stamp and the imprint of his decision. That was always a letter: to his wife if he was away from her, or to Thurlow Weed, if Seward was in Auburn.

He went upstairs to the ground-level rooms of the house and headed for the large library, his favorite room. It was twelve feet high; there were three huge bookcases: The Madison Papers, the works of Hamilton, the Statesman's Manual, novels, poetry, history. The sun had gone down and no more daylight entered the two tall windows, but there was a complex chandelier, with a dozen lamp

wicks, in the center of the room. On one side there was a large couch, in the corners several Hitchcock chairs with straw seats, and in one corner a tall maple writing desk, with places for ink and writing paper. On the walls were oils of various Sewards, and a picture of Portage Falls by the oil painter, Thomas Cole.

Seward went to the desk and he wrote to Weed that he now faced one of the gravest hours of his career. He had to defend Freeman: "He is deaf, deserted, ignorant, and his conduct is unexplainable on any principle of sanity." He would take Freeman's defense, if Freeman wanted him to—if indeed, the man even knew what that meant. As he wrote, he visualized Weed receiving his letter in Albany: a tall and contained man, rather awkward in appearance. Weed had charm and a wonderful way with men, and an authoritative manner that had once caused Seward to say that he had "no idea that dictators were such amiable creatures." In any case it was a characteristic of this particular "dictator," who ran the Whigs in New York State, that he endorsed just about any view Seward put forward and backed anything the Auburn man wanted to do.

Now Seward went beyond into the larger affairs of their time and placed the Freeman case in the context of that political hour: he wrote to Weed that the antislavery movement badly needed a new victory, that the Mexican war "has put back the country twenty years materially and morally." Freedom hadn't ripened yet, but the war was plucking the fruit that had grown so far. He complained that in the hysteria then sweeping the country even the abolitionists had abandoned the slave cause. He wouldn't retreat before such pressures, he said, and he wouldn't join those who apologized for the war and the proslavery meaning it held.

Seward had a favorite saying: "In human affairs there is nothing so bad but that there is some way out of it," and he had had the chance to live that bit of outlook. When he returned from Albany several years before as an honored ex-Governor, he was broke, with a great home to maintain and interest on properties to pay. His friends urged him to file in bankruptcy and start over again. He wouldn't think of it, he said, and instead he got down to business. Going to his office daily, actually wearing out his old clothes, burning tallow candles, smoking a pipe instead of the more

costly cigars, he had entered into a phase of economy; he intended to balance his cash books.

After a year or two he did begin to "see daylight," and thereafter his interest in political affairs resumed. The old passion for the rights of slaves reasserted itself, and now there was this . . . a *cul-de-sac* . . . a sudden unexpected switch in fortune, a vast complication in his professional life . . . and it became necessary for him to draw on his inner philosophic strengths ". . . that there is some way out of it. . . ."

"I am determined to live and die faithful to all my past life and opinions," he wrote.

CHAPTER SEVENTEEN

How Do You Determine Insanity?

Late in May, the Honorable John Van Buren, Attorney General of the State, arrived at the same depot opposite Auburn Prison to which Seward had returned a week or so earlier.

Van Buren was young, only thirty-six, and a popular man in Albany. He had a quick wit and good sense of humor. He was heavy-set, with a good physique, and he had the bearing of an aristocrat. His father, Martin Van Buren, had been President of the United States, the eighth President, only a few years before—and John Van Buren knew what it was to live at the White House.

In college he had been a drinker and gambler, and men liked him. He had been admitted to the Albany bar when he was only twenty-one, and he'd figured in many important cases. Later he had become attached to the American Legation in London, and he was a favorite at the English court.

That was the last schooling he needed to pick up an air of ease and eloquence, and when he returned to the States his political friends made him Attorney General.

He was, in fact, such a sartorial figure and so eloquent that when they didn't call him "the young fox," they had another name for him that was just as appropriate: Prince John. He had the bearing of a prince—so the Cayuga County Court politicians, needing someone with finesse and talent and appearance and stature to counterpose to Seward, had brought him here—and he was being briefed by everybody of importance in the village.

Van Buren had his hour with Freeman at the jailhouse, too. He decided—*at once*, he later told the court—"in a short intercourse I became perfectly convinced that the prisoner was sane . . ." Only he was wicked and depraved, all evil and guilt, and the Negro ought to be hung—and he'd hang him!

Alvah Fuller, the sheriff's aide, working about the jailhouse, talked with Freeman every day.

Freeman didn't have much to say, except to ask about some detail of his cell life: there was no water in the cup . . . a spoon was twisted beyond use . . . could he have some tobacco?

Once, on one of the few occasions when he offered to say something without a question having been asked, he mentioned to Fuller that a visiting doctor had told him the irons on his leg were so heavy they might make a sore, and he might have to have his leg taken off, and that might kill him.

That prompted Fuller to ask, "You afraid to die?"

"Want to live a little longer," Freeman answered.

Fuller said, "That's what everybody is going to see about."

The time for seeing about it came on the morning of the first of June, the day of the opening of the special court, and the townsmen came out early to make sure to get seats. They wanted to look at Bill Freeman. The stories of him and his savagery had been so bruited that the people expected to see someone large with an enraged look—a beast—and they wanted to feast their eyes.

So far the courthouse had been big enough to hold the citizenry for even the most dramatic of cases, but suddenly, this day, it seemed to the town fathers to be small. The oak-paneled court, with its oaken floors and oaken pews, was jammed, and all the standing room in the rear was taken; beyond, on the stone steps, and on the slate sidewalk, and even out in the cobblestone road, stood the remainder who couldn't get in; and they waited for some sight of Freeman and news of what went on inside.

At the bench and in the dock there was a swift flurry. Judge Bowen Whiting entered from his antechamber; he was gowned in black, most majestic and solemn. Four associates trailed behind him

and they took their seats. The judge took his central one overlooking the room.

The villagers stared at the counsel tables. Where was Attorney General Van Buren? Luman Sherwood was there, but where was "Prince John"?

Van Buren wasn't here, and a good reason for it; he was elsewhere, preparing to take over the case of Henry Wyatt, which was due to be tried first. He'd been reliably told there wasn't a chance today for anything but a postponement of the Freeman case, so he was letting Luman Sherwood handle it.

After the crier called out the usual forms, Judge Whiting tapped his gavel and ordered the prisoner to be brought in.

Sheriff Pettibone came in through a door, Freeman manacled to him. The villagers heard the jangle of the chains first, then all stood and craned and jostled. Even the judge could hear their murmurs: "Why, he's short!" "Look, there's nothing to him, a little fellow!" "The monster! He's so *small.*"

Judge Whiting quieted the court: "*Bring the prisoner to the bar!*"

Freeman, dressed in a gray cell suit, was ushered before the bench. He looked up at the judge and a smile broke on his face: it reached the point where it seemed he would surely break into laughter, but the laugh never arrived, and there the smile stayed.

Luman Sherwood—tall, dressed in brown, with carefully combed brown hair, groomed and handsome, an able lawyer—arose. Four indictments of murder had been drawn against Freeman, but Sherwood read only one, that naming John G. Van Nest.

"How do you plead?" the judge asked.

Freeman merely looked at the judge and favored him with that incessant near-to-laughing smile.

The villagers stared silently, incredulous that this little man could have done what he had done. But they loathed him, no matter how unthreatening his slightness.

The judge lifted his voice, his face reddened, and he demanded of Freeman again, "*How do you plead?*"

No answer.

Then, from a position in front of the spectators' benches, but not from any counsel table, Seward arose. He stepped forward to

the bench. "Your Honor, I plead insanity—in behalf of the prisoner."

Sherwood advanced a pace or two toward Judge Whiting. "Your Honor, the people hold that the prisoner is sane."

Seward started to make a reply but then withheld it, as the judge went swiftly ahead: it seemed to him that there could be no further proceedings until the issue that had been joined on the mental condition of the prisoner was disposed of; the statute expressly declared that no insane person could be tried; the only question was, *how was this to be determined?* Did the counsel have any suggestions to make that would satisfy him and the associate judges?

Sherwood proposed that in his opinion the court might determine the present sanity of the prisoner, either by a personal inspection and examination, with or without the aid of physicians, or by a jury empanelled for that purpose, whichever the court preferred. He himself had observed the prisoner and was satisfied that he was not insane. It appeared to him that if the judges made a similar personal examination of the prisoner that would satisfy their conscience.

No, said William Seward.

He regarded insanity as a fact that should be determined as other questions of fact are required to be in criminal cases. Because of this he suggested a trial by jury on the issue of sanity.

The ex-Governor knew he must settle once and for all any possibility that this case could swiftly be disposed of by any legal subterfuge, or any collusion of court and the district attorney.

"It is important to the people as well as the prisoner that such an investigation be made as shall be entirely satisfactory to the court and the public. If the prisoner be insane, as the plea alleges, he ought not to be required to answer; if he be sane, he should be tried. While the examination of the district attorney has convinced him that Freeman is sane, my examination has convinced me that he is insane. Others, with equal advantages for arriving at the truth, have corroborated my opinion.

"Now then, if a trial by jury is the right of a sane man, ought it not to be accorded to one who cannot hear you nor make any election in the premises himself?"

The judge tapped his gavel lightly, swiftly announced his decision: the question must be reserved for advisement. In the meantime return the prisoner to the County Jail.

The case, for the present, was put over.

As yet the prisoner had no counsel.

Seward had merely interposed the insanity plea—in the absence of anyone else in the village to speak for William Freeman.

CHAPTER EIGHTEEN

The "Manufacture of Witnesses"

June was a judicial wheel turning in the village. A calendar of sunshine and judicial determination. By then the trees, the vines and the shrubs were green, all the varied tints that sunshine and shade draw out of primary green.

And the insanity trials of Wyatt and Freeman ripened.

As soon as the Freeman arraignment had been postponed, the retrial of Wyatt began. The Attorney General took over on that, bent on giving the people what they wanted: "Get rid of Wyatt first! Hang him!" Seward appealed to the court to try this case elsewhere, in a place where there was no passion against the prisoner, or to postpone it. No, Judge Whiting ruled, on with it.

For two weeks Seward examined and challenged jurors. A jury was finally secured—composed, Seward knew, of jaundiced villagers frightened by the Freeman slayings—and the trial began.

All of his married years, when he was away from Fanny, he had acted under a compulsion, that had become an idiosyncrasy, to write her his inmost thoughts. Sometimes two letters a day. Once, in the State Senate fifteen years earlier, Senator Fuller had seen Seward penning a long letter to his wife and asked who the letter was for. Seward told him, and the Senator said, "It may be that you will continue to write such long letters to your wife till you are fifty years old, but I doubt it." Seward described the incident to his wife at the end of that same letter, and asked, "Do *you?*"

Now, in court, deep in the trial, realizing he was fighting a losing

battle, feeling alone and needing to speak to his wife, he scribbled a note at the counsel table and had a messenger take it to Fanny. It was brought to her and she read, ". . . in this court I am fighting a battle in which I ask no sympathy or support. The court will convict Wyatt by breaking down rules established by the Supreme Court, and the conviction may ultimately be reversed."

Again Seward brought medical witnesses to testify to Wyatt's insanity, and on June thirtieth he summarized for eight hours. But the Attorney General had conducted just as vigorous a case. Once, during Van Buren's charge, a single juror known to be sympathetic to Wyatt, fainted. The Attorney General had a jury and judge who were in his grasp; and the jury quickly—in a half hour—found Wyatt guilty and sentenced him to die six weeks later.

It is a fault of lawyers that they like to see everything in writing. Such was Seward's practice, and his habit may have been transferred to his wife, for she too wrote a letter at once to her elder sister, Lizette Miller, in a distant village. She had a way of sealing decisions, also by quill, like her husband's incessant notes to Thurlow Weed; and when something stirred her, she had people to confide in, her family, friends. This time she told her sister that Seward, in this loneliest hour of his life, had his wife's support:

> They have brought in a verdict of guilty. Wyatt is made to answer for the murders committed by Freeman; and it is more than probable that Freeman, although insane at the time he perpetrated the horrid deed, and now rapidly sinking into a state of idiocy, will be another victim to satisfy popular vengeance. Wyatt received his sentence this morning in the presence of a thousand men and two or three hundred women. The day of execution is the 18th of August.
>
> The next movement of the court is to hurry on the trial and sentence of Freeman. Henry is, of course, advised to cease all efforts to prevent so desirable an end. He will do what is right. He will not close his eyes and know that a great wrong is perpetrated, without offering any remonstrance; and yet, this is the course advised by many who call themselves his friends.
>
> I can conceive of no spectacle more sublime than to

> see a good man thus striving to win, to deeds of mercy and benevolence, the perverse generation among whom his lot has fallen.

The verdict made the villagers jubilant, and for a few hours everything looked again like bright summer. They went through the streets happily sniffing the fragrance of the locust flowers. That was the common flower of the village at this season, and it gave off a fragrance almost harsh in its generality. Yet the faint awareness of Owasco Lake, with all that had happened there, was never far from their minds. Though ordinarily it was the embodiment of all beauty, now the sense of the long blade of water hung over them in a different, an awesome kind of way: the beauty of the place, its hilly shores, its glacially formed knolls rolling down to meet the undulations of the village. All the presence of town and lake and hill and green summer lay as a warmth this year somehow unappreciated. Mostly, the beauty was hard to see or feel. . . .

The townsmen didn't get up in the morning and call out to their neighbors, "Isn't it beautiful today?" but they stopped at their fences and at one another's lawns and they said, "Now we got Wyatt, let's get Freeman." "Van Buren is doing a good job."

Mostly they stared wildly into each other's faces, somehow ignoring the rosebushes and peony bushes, scented though they were. And June ended that way, the village bereft of its natural beauty; the sun was overhead now at noon each day, straight overhead, and it boiled, and the people's blood boiled. . . .

While the Wyatt trial had been on, William Freeman had been visited by an incessant stream of men: doctors, lawyers, village officers, prison guards, ministers, old neighbors who had known him in childhood, anyone who wanted to get in on the coming trial —on either side. It became known as "the period of the manufacture of the witnesses."

Since nobody knew what sanity was, nor what was insanity—not clearly anyway—not so that there was any general acceptance of how it could be determined, one man's opinion might be as good as another's. Medical men didn't yet have respect in this area. The names of the experimenters in Europe were unknown; their American followers weren't known.

So a free-for-all opened: with Freeman being visited by honest people and politically interested ones, by fearful townsmen and meddlers; everybody wanted to have a talk with him and go away and say, "I think he's sane," or "I think he's crazy."

Depending on what they believed or wanted to believe, they went to the prosecution or the defense, and volunteered to be called as witnesses and tell what they'd personally known of the prisoner before the murders and what they thought of his condition in the lockup.

Most of these callers knew, before visiting Freeman, which side they were on—and whether they wanted to find him sane or insane!

Honest men and religious men, sincere men and self-interested men: whatever their motivations, or fears, or the pressure upon them, or the width and depth of the spirit of hysteria that had whelmed them—they knew before they entered the jailhouse what opinion they were going to bring out with them!

"Some senseless things being said in the jail," it was whispered; and they didn't mean just what Freeman was saying, for the witnesses-in-the-making, straining to get understanding of the colored man, said odd things themselves. Sometimes Freeman was interviewed by just one person alone; at other times there'd be a half dozen in his cell, some talking, some taking notes—everybody exploring a man's mind and trying to figure out why he'd behaved as he had.

There was Dr. Leander Bigelow, sent by the District Attorney's office to interview the prisoner: they could rely on Bigelow. He was the prison physician, five hundred dollars a year of the state's money, and the state wanted to see Freeman hanged. Bigelow's main job in prison was to detect counterfeits, men who feigned insanity or illness in order to better their positions or get out of work. "Dissembling" they called it then, an old reliable Anglo-Saxon word for faking. Was Freeman dissembling?

It was going to be a main contention of the people that Freeman was a faker; he was simply posing as an insane man and being very capable about it. Dr. Bigelow better go there and find out about it and come back to the prosecution lawyers and confirm what they felt. So the good doctor went to the lockup and tested Freeman's coherence and knowledge and memory.

"What are the names of the days of the week, Bill?" he asked.

"Monday, Tuesday, Wednesday, Thursday, Friday, Saturday," Freeman answered; hesitated, and then added, "Sunday."

I couldn't do better myself, Dr. Bigelow thought.

"Do you suppose we ought to go to meeting?"

"Well, I s'pose we ought to go to meeting."

"When?"

"The Sabbath."

This man is as sane as I am, thought Bigelow.

Dr. Bigelow asked how many weeks in a month, and he got the right answer. How many hours in a day? Twelve, was Freeman's answer. How many in a night? Twelve, the prisoner answered. How many in both? Twenty-four was the perfect answer.

"How many cents in a dollar?" One hundred, the colored man answered.

"This fellow knows everything," the doctor said to himself. "How many days in a year?" he asked.

The answer was, "I don't know exactly," but Freeman was right about the number of months in a year.

"Are you afraid you shall be hung?"

"No sir."

"What made you kill that family?"

"Well, to see if I couldn't get revenge, or get some pay for being in State Prison about a horse, and I didn't do it."

"Did you know them?"

"No."

"Are you sorry you killed that little child?"

"Don't think much about it."

"*Are you not sorry you killed the little child?*" The doctor was emphatic.

"I don't know but it was hard—it was little—I rather it was bigger."

"Do you know it isn't right to kill folks?"

"I s'pose it ain't right to kill folks."

There! thought Bigelow. He knows right from wrong. He's sane all right.

The doctor saw Freeman six or seven times during this period

of witness-manufacturing, and he felt that Freeman was ignorant, morose, even degraded—but not insane.

"There's going to be plenty of witnesses in this trial," Sheriff Augustus Pettibone said to himself. He had a private game all of his own during the manufacturing time—a three-week period that had begun on June first. He fancied he could figure out who was witness for which side, depending upon what he knew of the visitor's church or political faith and business interest.

The sheriff watched them come and go: abolitionists, Whigs, Democrats, doctors, lawyers: and Freeman, in his coherent-incoherent way answered all interrogators. He talked alike to men who wanted to send him to the gallows and to those who came to him as emissaries from the defense.

Each side sent its medical men. Seward had his, the leading mental hygienists of that time in New York State: they had come here to give testimony in behalf of Wyatt, and they stayed to examine Freeman. But the prosecution marshalled strong forces to get the local doctors into line. Most of the local general practitioners went away intending to say that Freeman was sane, but one or two decided they'd take an ambivalent stand if they could get away with it.

As witnesses left the jailhouse, they ran, each with his viewpoint, to the District Attorney's office in the county building—or to Seward's office in the Exchange Building.

The sheriff watched, and he kept saying to himself, "He's Seward's man," or "This fellow is the Attorney General's."

He couldn't figure out which side William Smith was going to be on. Smith was a real puzzler. He had been foreman of the dye house in Auburn Prison three years earlier when Freeman was there. Smith had got along pretty well with Freeman, didn't beat him or overwork him, but he knew that Freeman had been in two serious altercations with other inmates and that the guards had flogged him regularly and that once he had been badly beaten over the head with a board by a keeper named Tyler. The sheriff knew that Smith was a religious man, a teacher in the Sunday school, and the word "Christ" rolled from his lips frequently. He eavesdropped when Smith talked with Freeman.

The prisoner recognized Smith, and when Smith asked, "How's your health, Bill?" Freeman answered, "Good."

The former guard asked details of the actual massacre: how and why Freeman had gone where he did, why he didn't kill others, why he selected the Van Nests, who he had slain first, and in what order the others, and Bill answered the questions readily.

"Why did you go so far out of town?"

"Well," said Bill, "there was a better chance to fight up there."

"Did you mean to kill one more than another?"

"No."

"Do you know you've done wrong?"

"No."

"Don't you think it's wrong to kill the child."

"Well, that looks kind o' hard."

Smith named the four that Freeman had slain, and Bill said he thought he had killed five, and the visitor asked again why Bill thought he had done right.

Freeman answered he had been wrongfully in jail for five years and they wouldn't pay him.

"Who won't pay you?"

"The people—so I thought I'd kill somebody."

"Bill, do you know whether there is any place such as hell where they punish people who steal horses and kill people?"

The prisoner was quiet. Smith repeated urgently.

"Don't believe there's a place as hell."

"What about heaven?"

"Don't think there is."

Where did Bill think he was now? Freeman said he thought he was in County Jail, but wasn't sure.

How many did he intend to kill?

All he could, Freeman answered; meant to fight and kill till someone killed him.

Did he expect someone might kill him?——"Thought likely there might."

"How much pay do you want, Bill?"

"Don't know—good deal."

"If I count you out a hundred silver would that be enough?"

"Think it wouldn't. Not for all I done in prison and didn't steal no horse and do no wrong."

"How much would be right?"

"Don't know."

Then there was a strange quick interchange of talk between William Freeman and William Smith in which Freeman said he thought a thousand dollars would be about right, that then he'd be willing to quit even.

Freeman's face brightened, and he looked up at Smith hopefully.

Smith went away believing that Freeman had undergone some deep change since he had known him in prison, a deterioration of some kind, he couldn't say just what: and he ran to the Seward forces and agreed to go on the stand and say what he believed.

In the period of "the manufacture of witnesses" Dr. Bigelow and William Smith had been only two of sixty men who filed in and out of the jailhouse all day long, "examining" Freeman.

Sheriff Pettibone complained of a sprained wrist from opening and closing Freeman's cell door.

Only a few believed they were unequipped for the task, and expressed uncertainty.

All of the others believed they had just as much right to judge what was sanity and what was insanity as Seward's experts.

The time for the manufacture of witnesses ended on June twenty-fourth.

From then on a preliminary judicial process unfolded.

It was called a trial.

But it was actually a kind of wholesale testing operation, in which the manufactured witnesses and other involved villagers gave testimony about the murder—and judged Freeman's sanity.

A jury began listening to this evidence; and if this jury were to decide that Freeman was sane, then he would be formally charged with murder, and there would be a "Trial of the Main Issue."

The actions for Wyatt and Freeman were concurrent, and developments seesawed between the two cases. At one point, during the closing days of the Wyatt trial, Seward was devoted entirely to that case, while his colleagues, in another room in the courthouse,

began examining jurors in the preliminary matter of Freeman. That was a kind of squeeze play on Seward, pushed through by the judges and the people's defenders, to hurry the Freeman case on while Seward was tied up with Wyatt.

So the town's real brilliance this June was not in its sunshine, but in the way that the principle of insane murder was being fought out, once and for all, as a precedent in jurisprudence and medicine, in two cases rolled together as one general situation. Each case wrapped in the other, contiguous; each linked to Auburn Prison; each related to the life of every villager—with the same counsel representing both defendants.

——With the great debate on insane murder—on the known and the unknown in human nature and mental hygiene and brain disease up to this hour in time—still to come.

——Never to be fully developed in the Wyatt case, but destined to unfold in the macroscopic instance, the grand battle for the body and soul of William Freeman.

CHAPTER NINETEEN

The Inglorious Fourth

> At this juncture, had William H. Seward been found anywhere at night alone, and unprotected by powerful law-abiding forces of the region, his body would probably have been discovered in the morning hanging from the nearest tree.
>
> —U. S. Senator
> Charles Francis Adams

Early on July Fourth there began in the town what may have been the strangest celebration of Independence Day in the history of the land.

The people came out from all parts of the village and from the surrounding area, for they had heard that a verdict was probable this day on whether Freeman was sane, and if he was, he'd be charged with murder and go to trial for his life.

By nine o'clock, two thousand villagers pressed against the walls of the courthouse, and the rumor raced among them that if the jury didn't bring in the right verdict— *Don't be surprised if the courthouse is burned down!*

There had been no church bells to announce the dawn of this Fourth. Neither were cannon fired, nor did firecrackers sound: none of the usual rituals. No schedule of meetings and speeches in the public halls, and no procession was involved. No orators today— except those in court.

The tall wooden structure stood quietly in its usual pride; the high stone pillars in front guarded the building in a similar majesty; and now, as the nation's liberation from the British was being celebrated all over the States, the villagers yelled that hanging was too good for either Freeman or Seward: they should cut up Freeman the way he had cut up the Van Nests, and Seward should be driven out of town.

On the outskirts of this gathering a few of the more clownish citizens mimicked Freeman's deafness, they lampooned his idiocy, and they moved about like mimes showing one another idiotic smiles in simulation of the set smile on the prisoner's face. *Give him to us, we'll take care of him!*

The mass voice lifted higher, the demonstration mounting.

It had been organized, that was clear. Agitators who wanted a hanging then and there stood on the courthouse steps, they walked back and forth on the stone and kept the crowd excited. It was like the day when Freeman was brought home from Schroeppel, but today an added patriotic fervor replaced the earlier fury. There was no reason or need for this trial, they shouted. Why delay? Why the expense? Get him now!

The anomaly was that the citizens, in all their honesty and understandable hatred of murder, believed that their demonstration was itself a justifiable kind of Independence Day celebration. They felt that the immediate hanging of Freeman and the discrediting or even the tarring of Seward would be in the patriotic tradition of the founding of the nation.

Seward, inside, quietly summarizing, was constantly interrupted by the turbulent Fourth of July popping and crackling of the cries from the outside, fully aware of the paradox of a mob calling for violence against him and the accused when the same people might, in other circumstances, have been listening to him orate this very day about the American heritage.

For, they said—those who liked him—that he was a walking principle, a two-legged walking principle of a man, dangerous to oppose when he believed he was right on some fundamental ground . . . all nervous energy and the incarnation of human eloquence; a man who spoke not loudly, but with a terrible conviction and an intellectual earnestness. He could coin phrases that stirred people

to movement, and he usually put them forward on national holidays, like this Fourth. *There is a higher law than the Constitution,* he would say later, and it would go into the history books. . . . *It is an irrepressible conflict between opposing and enduring forces.* And now he was in this courthouse coining such phrases . . . *I know and all the world knows that revolutions never go backwards.*

Yet now—for his part in the present one, the beginnings of the revolution in the understanding of the human mind, the better understanding of "Law and Science, Health and Disease, Crime and Innocence," as he put it in the courtroom—there was this multitude outside, and though it was for their advantage that he pleaded, they yelled, so he could hear it, standing there in the dock: *String 'em both up!*

He knew that witchcraft presented itself in many guises: that out beyond the exorcisms of the crowd were working on the jurors. He could see the eyes of the jurymen roam perturbably, seeking through the windowpanes for the sight and sound, understanding the command of the inquisition to find "the black devil" sane and ready for trial for murder. The insanity of Freeman had a counterpart in the frenzy of the community: Seward knew that it was not surprising that delusion might come among worried and fretful men, uncertain of themselves, and his own function was to wrest a gain, if possible, from out of this tangle of roaring human emotion.

There were bailiffs, men from the sheriff's office and constables; guns drawn, they stood on the courthouse steps and howled back the crowd with the byword that was toning people everywhere in that time: *Fair play! Fair play!* Let the trial go on, the law take its course!

As church bells tolled over the heated village, calling the citizens to the evening service, the jury returned with a strange compromise verdict: *We find the prisoner sufficiently sane in mind and memory to distinguish between right and wrong.*

Sufficiently sane!

What kind of a verdict was that? What *kind* of sanity?

For here was plain implication, Seward realized, that the jury understood the accused was partially insane! Yet he must face trial for murder.

William Seward walked out of the courthouse. He soberly turned eastward along Genesee Street, then southward into South Street. He passed down the long granite sidewalk beneath the maples and the oaks that shaded the cool avenue. He reached his home.

He entered quietly and he told Fanny of the odd verdict and what it meant: that a maniac was to be tried as a murderer.

"Not like 1839, is it, Henry?"

"No, not like 1839."

There had been a salute of seventy-four guns for Seward on the Fourth of July, 1839, when he was Governor of New York State.

Twelve thousand children had gathered at Staten Island for an Independence Day celebration with Governor Seward as the honored guest. He had told them how, sixty-three years before, Sir William Howe had occupied the very cedar grove where their peaceful demonstration was then being held. He spoke of public schooling, of which he was a major advocate. "We must educate the whole people, not merely the favored classes," he had said. Afterward, as the Governor left on a launch that would take him to the Albany evening boat and back to his affairs in the Capitol, guns boomed from the warship *North Carolina* anchored nearby. First the starboard guns, then the port artillery, and then the guns at the bow and a last salute from cannon at the stern. Seventy-four guns for Governor Seward and Independence Day!

And now, on this Fourth, 1846, there were guns of a sort firing in his own town—but aimed *at* him.

"No, not like 1839," he mused.

CHAPTER TWENTY

Only Copper John Is Silent

One other figure watched in silence from an elevation the whole spectacle of the dissevered village.

This was Copper John, a Revolutionary War hero.

Copper John was a six-hundred-pound copper-plated statue of a colonial soldier on top of Auburn Prison. He had a metal skin a quarter of an inch thick, and from his heels to the tassel on his military cap he stood nearly nine feet high; the hundred-pound rifle that pointed upward to the sky was eleven feet long, and the bayonet that aimed out over Auburn was thirty-one inches.

The statue faced the entrance of the prison, its back to the prison yard, and no inmate could look Copper John in the face.

But Copper John could see the whole town.

He was a depiction, it was said, of Colonel John Hardenbergh, the village founder. The colonel had died before the statue to his memory went up on the prison; in fact, he never even knew a prison was to be erected. So that he who fought for men's liberation had never been consulted about whether he wanted his memorial erected over a structure housing a thousand men deprived of their freedom because they had broken the law.

The copper colonel, now mythologized atop the prison, surveyed the acreage that had been given Colonel Hardenbergh for his valiance. The land had seen changes since then. It had become seminary and prison and factory site. The swamp and muckland that surrounded the prison had been cleared, and was now called

State Street, in honor of the State Prison located here. An Indian trail that curved up and down hills, entering the east end of Auburn, had been widened and had become the main street, named Genesee Street. It ran for a mile until it reached the westerly edge of the town, and then it rolled on over a tree-lined roadway toward the westerly settlement of Aurelius—all hills, forest-covered humps, and dips into deep green-coated earth.

Copper John had been standing in his soldierly pose for a generation, watching the village grow, seeing how the people mingled, the well-to-do nodding hello to the poor and each knowing the gossip of the other. How they went to church, each denomination to its own wooden structure. Sundays it was as if Cotton Mather were still alive. On weekdays the townsmen went about their work and business along the avenues of mud and over the more important cobblestone streets in the center; and the handful of colored mingled with the whites, doing the usual menial work for them, washing their clothes, sawing their wood, and cleaning out the privies behind their homes, and everywhere there was a spirit of enterprise, as they called it. But the schools weren't numerous, there were only four one-room schools in the village, and the poor couldn't go to them; and the well-to-do sent their children to advanced schools away from Auburn.

Yet the town had taken shape, under the silent aegis of the copper memorial, with the prison somehow the center of it all, and the rest derivative. Except, of course, for the natural beauty which, the Indians had said, derived from the Great Spirit; for the maples towered and spread, and elm and oak and mountain ash and poplar sprang up everywhere. The great trunks lined the streets and reared up beside the frame houses. In fact, the town fathers, to protect that natural forestry, had passed a law that, when a man built a house, he had to plant a tree or two between the sidewalk and the curb in just such and such a way, so as to keep the town a shaded place, a village of beauty in the lake-spattered wilderness, such as Goldsmith had rhymed about. And so it had become, and there had been peace and growth here until now.

If Copper John could have reasoned, he might have understood that, in a way, a remarkable event had just occurred. Freeman was in jail. He was not yet lynched. (Neither was the ex-Governor.) Not yet, anyway, and not that all of the angered villagers had

given up. Still, it was not the slave South where an act such as Freeman's might have met with a retaliation that could have wiped out part of some colored community. It was the North, the Emancipation Act of this state was on the books. There was free-soil sympathy abroad, and a suffrage spirit; temperance reform and opposition to capital punishment were in the air; as well as the farsighted notion that some men who murdered might not be responsible: and all of these human rights moods were a waving conscience in the mob movements. The air of the time restrained them in some part even as the wit and strength and right-mindedness of the law restrained them; so with the religious life of the community, and the essential desire for peace and growth, these were unseen gonfalons over the lynch formations, civilizing murder sentiments, and tempering wrath.

Copper John, in the light of the sunny day, and mildly illuminated by oil lamps at night, stared eastward over the dissevered village.

His rifle stayed steadily in a position of command, the bayonet ready to the sky: and Copper John was silent.

PART FOUR

This Strangest Of All Trials

CHAPTER TWENTY-ONE

The "Terrible Farce" Begins

If, in Seward, the Auburnians had their villain, they had also in "Prince John" Van Buren their popular idol, for he was beating the redhead. The Albany man had whipped Seward in the Wyatt case (with the aid of the frightened jurors), and he had been primarily responsible (with the assistance of the community hysteria) for bringing about the decision that Freeman must be tried for murder.

"Ought to make him President, like they did his father," the villagers were saying. You could hear that in each saloon, at every church meeting, and on the front porches. "Let's see what 'Prince John' does to the redhead next," they said to one another. "He'll fix 'im."

The time for Van Buren to fix Seward arrived the next morning. There was the usual court scene: the packed benches, the throng at the doors, and the people craning again to see Freeman, this time hustled into court for arraignment.

Seward raised objections. How about a change of venue? What about a postponement? No fair trial was possible here, wouldn't the judge acknowledge that? But Judge Whiting overruled. There could be no questioning of the "sufficiently sane" verdict of the preliminary trial. Although, said the judge, it wasn't a verdict of sanity in the strictest form, he was satisfied that the prisoner must be tried, and that that was the intent of the jury.

"The prisoner will come to the bar."

Sheriff Pettibone escorted the chained and clanking captive forward. Freeman beamed his perennial smile at the judge. His gaze wandered once to the face of Van Buren and he smiled pleasantly at the man who was trying to get him hanged.

District Attorney Sherwood came close to the colored man and shouted in his ear, "I-am-going-to-read-this-indictment-to-you!"

Freeman looked insensibly at Sherwood.

The prosecutor read, and then asked loudly, "Do you plead guilty or not guilty to these indictments?"

Said Freeman, "Ha?"

The District Attorney repeated.

Freeman answered, "I don't know."

"Are you ready for trial?"

"I don't know."

"Who are your counsel?"

"I don't know."

"Are you able to employ counsel?"

"No."

Sherwood seemed momentarily embarrassed at the blunted and senseless answers of the defendant. He looked at Judge Whiting—as if for help.

Seward watched the District Attorney and a thought came to his mind, how men will sometimes move *from the place they are in,* rather than from principled motives. Word had got to the defense offices a few days before that Sherwood, speaking randomly to several village officials, had let slip, "There is more reason for an insanity defense in the case of Freeman than there was for Wyatt" —an astonishing admission from the man who would have a major job in showing Freeman to be sane.

Judge Whiting looked down at the table of the court clerk. "Court directs the clerk to enter for the defendant a plea of 'Not Guilty.' "

The clerk busied himself with his pen.

The judge seized the instant of embarrassment away from young Sherwood. He asked, "Will anyone defend this man?"

There was a long silence, and no move from any part of the court.

The judge peered from one side of the dock to the other; he glanced into the spectators' section; and then he noticed attorney David Wright at Seward's table.

Wright, the village philanthropist—a large man, gray-haired, wearing glasses, conservatively dressed, a man with a benign and an experienced face—was rising slowly to his feet. His fingers gripped the edge of the table. Then he raised his right arm slightly. The index finger was pointed at the ceiling in the gesture of one who had something severe to say. He had opened the preliminary trial of Freeman while Seward was engaged with the Wyatt defense, and he knew the issue of insane murder as well as Seward. He stood partially facing the judge and partially addressing the audience, and he thundered, "I'll not consent to take part in a cause that has so much the appearance of a *terrible farce!*"

There was a long rolling quiet again, and the stunned spectators glanced at one another, at the judge, at the defense table.

Then Seward was standing.

His face seemed unusually white. His features were hard set and he said in a voice that barely went beyond the dock, "*May it please the court, I shall remain counsel for the prisoner until his death.*"

The case was to continue at once, and Seward began by attempting a retreat.

He doubted, he said, that in view of the prevailing partisan spirit a jury of twelve unprejudiced jurors could be found in the village, and any trial now would be but a hollow form unless by accident some cool persons got into the jury box.

"Moreover, I can truly say that my health and strength have already been so severely taxed by the Wyatt trial and the present proceedings that I'm not at all certain I can stand the fatigue and labors of a more long-drawn-out session of this court."

Would not His Honor, for the sake of this imbecile and insane client, and for the sake of public justice, continue these indictments until another term of court? He humbly asked and implored.

Van Buren moved from the prosecutors' table to a position before Judge Whiting. He was swift. "I don't believe, Your Honor,

that an impartial jury can't be obtained in this case." He gave Seward a harsh look. "The public demands this trial, and I protest against any postponement!"

Seward's finger tips rested on the edge of the judge's desk, above his head, and he looked up at the judge and took exception. "The public doesn't demand the trial of this man until he can be *fairly* tried."

Seward looked at Van Buren and went on, "While the blood of Freeman can never atone for the homicides, it can never satisfy public justice nor make amends for the wrong of forcing him to be tried by men who have partaken of the excitement which the Fleming tragedy has occasioned. Let it be remembered that the prisoner is incapable of any act respecting his defense, and is without capacity to name or the ability to obtain witnesses."

"Motion denied!"

"Exception!" said Seward.

"Prisoner will be placed on trial——" The gavel sounded, and the attempt at delay was defeated.

The judge settled into his chair, and the associate judges on his left and right shifted in their seats: everybody digging in for "the most important trial in a half century," as the prosecutor had already labeled it.

The spectators, too, settled down into their cramped positions in the pews. Theirs were the varied faces of growing America. Each year for a generation there had been "waves" of settlers coming here, a few hundred each year, until the last big wave, of several thousands, in these 1840s, of Dutch and English and Irish and Scotch and German. These were the faces—this the diversity—that stared forward at the dock and the prisoner and the other principals.

"Your Honor," Seward interposed, "that being your decision I have to ask that other counsel be appointed to help Mr. Morgan and me with William Freeman's defense."

Judge Whiting reappointed David Wright, the man who had withdrawn on grounds that it was farcical to try a madman . . . and the empanelling of a jury began.

"I challenge the entire array of the panel!" Seward declared.

"On what grounds?" the judge asked.

The ex-Governor pointed to a man seated in the forepart of the spectators' section. "There sits Richard Searing," Seward said. "He is a Quaker of the village of Venice." This court, the lawyer charged, had irregularly and unlawfully discharged Searing without examination. . . .

Sherwood leaped to his feet, came forward and looked up at the judge. He said that Searing was a Quaker and therefore his opinions were such as to preclude him from finding a defendant guilty of any offense punishable by death.

"If this plea is entered as a justification of the court's action, I demur," said Seward.

"Overruled!"

Lawyer Wright came close to the judge. "Why not examine Richard Searing, Your Honor, and let *him* tell what his views are!"

Overruled. The clerk must proceed with the empanelling.

There had been no more enlightened tradition in America until then than the Quaker tradition, and everywhere the entrenched feared the simple Christian zeal and humanity of this small sect. Over Quakers hung the aura of one of the nation's greatest names, Benjamin Franklin.

"Exception!" shouted Seward, again and again.

The judge's gavel regularly punctuated each legal byplay.

One by one, twenty villagers disqualified themselves, Seward challenging them.

Benjamin Atwood: "I think him guilty and responsible for his acts."

Edward Morey: "It was wicked, willful murder!"

Cornelius Flint: "I think he was sane when he admitted the crime."

Joel Hoff: "Wicked, deliberate murder done when he was in his senses, and he is morally responsible."

William Steel: "A crazy man is one void of common sense. Freeman has some common sense."

So the villagers and the farmers from other Cayuga County towns came to the stand and told what they believed insanity was or was not, because science had not yet defined it, or determined it, or classified it, and it was before psychiatrists or other experts, or any

group of medical men, had evolved whose opinions would be acceptable to the public. The case was about to be tried, not on what men knew of insanity, but upon what laymen *believed* they knew!

Opinion was to have its day in court!

Yet slowly jurors were being accepted: not that they were entirely satisfactory to the defense, but many townsmen were less overt in their antipathy to Freeman than others, or less certain of their views on sanity.

Most of those accepted by defense held a position somewhat like that of Obadiah Cooper who said he had opposed lynch law when he first heard of the murders, and he told the court gently, "The heart is deceitful, but I think I can weigh the evidence fairly."

The heart is deceitful!

How deceitful would it be? Seward wondered, accepting Cooper; and five days later, on July tenth, twelve jurors had been found and Luman Sherwood opened for the people with an attack on the current state of physiological science. . . .

CHAPTER TWENTY-TWO

Sherwood Opens for the People

THE JURORS

1. Andrews Preston
2. Lyman Royce
3. William Tremaine
4. Thomas C. McFarlane
5. John Christian
6. Norman Peters
7. Benjamin Beach
8. Garret V. Peak
9. Tompkins Tripp
10. Obadiah A. Cooper (the heart is deceitful)
11. Archer Macomber
12. John C. Yawger

"We are all aware that in physiology different theories have followed each other in rapid succession," said Sherwood to the twelve men, "and we don't know from the doctrines of the schools today what they may be tomorrow. Whatever they are now, liable as they are to fluctuate, we can't be too cautious in incorporating them into the law of the land."

The hot summer sun poured in at the tall court windows, and the light settled on Sherwood's face, upon the judge's bench, the judge himself, and upon a flag with twenty-eight stars hung behind His Honor. To the right of the flag a glass-framed picture of George Washington flickered in the rays. The sun whitened the table at which Attorney General Van Buren sat, and it lit up the prisoner's box, occupied by the smiling William Freeman. It suffused the faces of the spectators, and it hovered over the defense table where four lawyers listened, as Sherwood continued.

"Gentlemen of the jury," he said, "men of science, and I doubt not of skill, will be called from the Insane Asylum and other institutions of learning, who have visited and conversed with the prisoner in his cell, and these men will be introduced to prove Freeman is in a state of absolute and irrecoverable dementia . . ."

He wouldn't undervalue learning, he said, nor would he depreciate the jurymen's estimation of the value of science, and of skill and of experience, in determining the true character of any disease that such attainments could discover. But in view of what had happened at the preliminary trial, he said, he must caution the jurors "against receiving the dogmas of men, learned or unlearned, in violation of the plain principles of common sense."

There was better proof of Freeman's mental condition in the views of ordinary citizens who had known Freeman all of his life, than could be offered by the defense's experts, whose reliance was mainly upon their brief examinations of Freeman in his jail cell.

Then, by accident, and without any scientific intention, Sherwood said something that anticipated the later age of psychoanalysis. He thought he was being absurd and satirical, but he said of the attempt of medical experts to entrench themselves in the courts:

"If such fallacies shall obtain with jurors, we may bid goodby to punishing the atrocious crime of murder, until some new discoveries in science shall enable the learned doctors to enter the murderer's heart or analyze his mind, and discover the influences by which it is operated. . . ."

He was willing to concede that science and skill, with the aid of experience, could often trace the cause of disease and alleviate suffering, but he was unwilling to concede that vast learning was necessary in detecting the mental aberrations of one's intimate acquaintances.

He was saying that the villagers who knew Freeman all his life would be presented in contraposition to the outside authorities and their word and their common sense must and would have validity, that the jury should regard the opinions of their fellow villagers as authoritatively as that of the "speculative theorists."

The law must be upheld, the District Attorney said, and he closed his fist; not only the law that fixed a penalty for a crime, but the law that governs the testimony of experts . . . therefore, he said,

the burden of proof lay with the defense. Since the law didn't clearly fix the bounds and terms of sanity, let the defense state what it was, show what it was, prove what it was!

The District Attorney then made a subtle appeal to the jurors to take note of how Governor Seward, as he referred to him, had denounced the verdict of the preliminary issue and had even accused the judge of bias.

Magnanimously, he said that he and the State's Attorney General Van Buren could absorb such accusations, because the learned counsel for Freeman "was in a condition of uncommon zeal warmed by a cause of unusual magnitude," which they, as professional attorneys, could understand, "but so far as the integrity of the jury that rendered that verdict and the impartiality of the court that received it have been questioned by Governor Seward, I deeply regret his course."

A final point: the defense had charged that a fair and an impartial jury could not be found in this county, and that the public mind was so enraged at the prisoner's horrible crime, that the good sense and sober judgment of the citizens was paralyzed.

He conceded that great excitement had existed, and there had been reason for it. . . .

"That excitement has subsided and sunk into a quiet grief that still lives and must long live . . . but gentlemen, if any of you shall have imbibed prejudices against the prisoner, I call on you respectively to eradicate them now."

And the prosecution began calling witnesses. . . .

CHAPTER TWENTY-THREE

The Story of the Survivors

Helen Holmes, a pretty twenty-year-old girl, one of the two adult survivors, was on the stand responding to the Attorney General's questions and telling how the first knowledge she had of the assassination was the shriek of Mrs. Van Nest in the yard, followed by the barking of the dog.

Helen said she slept in the northwest bedroom downstairs, and little Julia Van Nest slept with her. Mrs. Wyckoff had retired to the north front room, and the young boy, Peter Van Nest, slept with her. Mr. and Mrs. Van Nest and the baby, George, slept in the sitting room; the hired man, Harry Van Arsdale, slept upstairs. . . .

"I raised the window and asked what the matter was. Mrs. Van Nest came to the window and said, 'I've been stabbed, you're all going to be killed.' I then left the window, ran to the front door, unlocked it and let her in.

"I re-fastened the door, and stayed in the bedroom about a minute.

"I then went into the north front room. Mrs. Wyckoff got up and went out into the hall. Soon after that I heard a noise, indicating scuffling there. It continued but a short time, and I went out soon after it subsided. I heard a noise upstairs, also, before I went out.

"When I went out I passed through the sitting room into the kitchen. I saw Mr. Van Nest lying on his face upon the floor, with one foot on the steps leading to the kitchen. He was dead. There

was no light in the sitting room then, but there was in the kitchen where Van Arsdale was. I found the back kitchen door open and fastened it, and then went back to the sitting room, leaving the light in the kitchen. As I came into the sitting room I saw a man looking through the front window.

"I went to the hall door, leading from the hall to the sitting room, which was open. Van Arsdale, who was bleeding, then spoke to me and told me not to stand before the window. He was then in the sitting room, near the kitchen door. The man then went to the window on the north side of the door. I remained where I was. He remained at the window but a short time looking in, when he stepped to the edge of the stoop and looked down north.

"I then saw his face distinctly. I could see that he was a Negro."

When had she next seen Freeman? the Attorney General asked.

She had seen him again on Saturday, after he was captured, and she had since seen him in court.

"Is that the man?" Van Buren asked, pointing at the smiling Freeman.

"The prisoner is the person."

"What happened after he looked into the window?"

"I observed in his hand what I thought was a gun, but don't remember in which hand he carried it. He went north until he got near the barnyard gate, and I saw no more of him that night."

She thought that Van Arsdale was standing up when she left the house to go to the neighbors, the Brookses, for help. "The child was living; it groaned but didn't make much noise. I went to Mrs. Brooks quickly, and ran part of the way. Mrs. Wyckoff was there and was wounded in the abdomen, and one of her fingers was cut. She was sitting up. I returned to Mr. Van Nest's house again between ten and eleven o'clock that night. Mrs. Brooks went with me."

"Had you ever seen Freeman before the night of the murders?"

"About a week before this affair, I saw the same Negro at Mr. Van Nest's house. It was on a Monday of the week previous. He came in through the back door yard into the back kitchen. He knocked at the sitting room door. I let him in. That is the door where Mr. Van Nest lay dead. He asked Mr. Van Nest if he wanted to hire a man to work. Mr. Van Nest replied that he did not; that he had a

man engaged, and asked the prisoner if he lived in Auburn. The prisoner said he was staying around there and had no work. Mr. Van Nest told him perhaps he could get work further up the lake. To this the prisoner made no reply. Nothing more was said."

"How long was he there?"

"He remained there not over five minutes."

"How was his hearing?"

"He was hard of hearing, and said he was deaf. When Mr. Van Nest spoke to him, he held his head down and said he must speak louder for he was deaf. He went out of the house the same way he came in and went north."

"Your witness," Van Buren said, motioning toward the defense table.

Seward walked across the dock space to the witness chair and gently questioned the young girl. What was her relationship to the Van Nests?

"Mrs. Wyckoff was an aunt to my mother. I went there to live about seven years ago when my uncle, Peter Wyckoff, was alive."

"Do you know the widow Godfrey?"

"I don't know the widow Godfrey. I saw her in court when she was here, but never saw her before. I know of no relationship existing between the Wyckoff or Van Nest families and Mrs. Godfrey."

"Do you know anything about a horse being stolen from Mrs. Godfrey in 1840?"

"I know nothing about a horse being stolen from Mrs. Godfrey until after the murder. I know nothing of Mrs. Wyckoff or Mr. Van Nest's making any complaint against the prisoner for stealing a horse; nothing of any of the family having been a witness against Freeman."

"Was there any money in the house?"

"Mrs. Wyckoff had considerable property and kept her money and papers in the north front room in a desk. She had forty dollars at that time. Mr. Van Nest kept his papers and money in a desk in the back room. I had money and kept it upstairs."

"Was any money taken?"

"No money or clothing were missed; nothing but the halter and the horse."

"Did Freeman see any money at the house when he called to ask if there was work to be had?"

"He saw no money when he was at the house to get work."

"Did you know on the night of the murders that this was the same man who had come there looking for work?"

"Yes, I knew on the night of the murders that he was the same Negro who came there for work."

"When did you see him again after the murders?"

"On Saturday following the murders I saw him. The officers brought him to the house. He had on the same clothes he wore when he came to get work. He was there ten minutes on Saturday while I was there. I didn't hear him speak."

"How did he look? How did he stand?"

"His head was down, and he looked up as he does now——" She looked across the room at Freeman as she described the look. "He didn't smile. He was standing up a part of the time, with his head down in the same way."

Attorney General Van Buren held Miss Holmes to the stand for one more question. "Did you see any sign of insanity in the prisoner?"

"I saw nothing indicating that the prisoner was crazy."

Cornelius Van Arsdale: The man who had fought Freeman and helped disable him said that he had retired a few minutes after the visiting neighbor, Peter Williamson, went home.

"After I had been in bed four or five minutes, I heard a woman shriek," he said, looking directly at Van Buren. "I raised up in bed and looked out of the window, saw no one and laid down again. . . ."

"Where did the shriek appear to come from?"

"It appeared to be out of doors. In about a minute after that I heard Mr. Van Nest ask someone what he wanted. I think he said, 'What do you want here in the house?' I next heard something fall heavy on the floor. I then got up and put on my pantaloons, but while putting them on, or my stockings on, I heard the door open. Someone spoke and asked if there was a man up there. I was then stooping over. I rose up and said there was.

"I then beheld a Negro, with a butcher knife in his hand, like

the one here, coming up the stairs. As he came up, he stabbed me in the breast, but the knife glanced off on the left side of the breast bone. As he stabbed me I pushed him back and he fell downstairs. He had a candlestick in his left hand, which I wrested from him, and with which I struck him. I then followed him down, and at the bottom of the stairs I found a broomstick, which I seized and with which I struck him two or three times. He made a quick retreat as I followed him up.

"The front hall door was open. As I looked out, I saw the Negro about halfway from the house to the gate. Mrs. Wyckoff, at this time, was on the last step of the hall door steps. I said to her that she had better come in to the house, but she went on towards the gate; and at or near the gate, she came up to the Negro, and there they had a short scuffle. I saw her strike at him, but saw nothing in her hand. He had hold of one of her arms with his hand, and she appeared to be striking at his wrist. They were there half a minute perhaps, and then she went south and he went north.

"I closed the door, but I think I didn't fasten it. I then went to the door leading to the kitchen. Miss Holmes came in, and said the Negro was looking through the window. I told her to step to one side, so that he couldn't see her. I sat down on the floor behind the stove. He was then looking in at the south front window. I saw in his hand what I then supposed to be a gun. He held it in his left hand. He then kicked the door open. I got up and started to go into the kitchen, when Helen said he had gone north.

"I then saw Van Nest on the floor, dead, as I supposed. I took hold of Van Nest and turned him partly on his side, but he rolled back on his face. Helen then asked me if she should go and alarm some of the neighbors. I told her to do so.

"When I went into the northwest bedroom Mrs. Van Nest was alive, but she was speechless. She died before I left the room. I carried the child from the sitting room to the bedroom, where its mother was. I didn't know then whether she was hurt or not. Its mother breathed twice after I took it in. I then took the child back to the sitting room and gave it to Julia, who carried it across the room once or twice and then put it on a chair. . . ."

"What did you do then?" Van Buren asked.

"I then sat down in a chair a few minutes—then went into

the kitchen—then came back, and went upstairs and put on my boots. My wound was bleeding profusely. It all took about ten or fifteen minutes from the time I went to bed until the time Helen started to go to the Brooks'."

The Attorney General asked, "Is that the man who stabbed you?"

"Yes."

Seward cross-examined. He asked if Van Arsdale was related to Mr. and Mrs. Van Nest. He said no, he wasn't, but he was a half brother of a Van Arsdale who married a sister of Mrs. Van Nest's.

"Do you know Mrs. Godfrey?"

"Don't know Mrs. Godfrey. Never heard of her before the murder. There is no relationship between her and the Van Nest or Wyckoff families."

"What kind of a man was Van Nest?"

"He was a domestic, sedate, and grave man."

"Had you ever heard of Freeman before the day the murder was committed?"

"I had not, but Van Nest had said to me that a Negro man was there on Monday of the week before, and he wanted work; he said the Negro was deaf. He didn't call his name or say he knew him."

"Was there any money in the house?"

"I supposed there was a little, as Van Nest was a man of property."

"What did Freeman look like when they brought him back to the house on Saturday?"

"He was tied. He didn't speak. He stood still—was chained—his head down, and he rolled up his eyes, as he does now."

Seward had no more questions, but Van Buren had:

"Did you notice anything in the behavior of the prisoner to make you believe he was insane?"

Van Arsdale answered, "Saw nothing to make me believe he was insane."

So the case opened in which one hundred and eight witnesses testified in both trials, seventy-two for the people and thirty-six for the defense—with about that many "authorities" on sanity and insanity.

CHAPTER TWENTY-FOUR

Everybody a Judge, Each a Diagnostician

During the next three days twenty-four witnesses were called: villagers who knew something of Freeman in his childhood, or in his prison years, or during the days and months preceding the murders; they told what they knew, and then answered the prosecution's invariable question, "Did you see anything in his behavior to make you think he was insane?" and these witnesses answered that they had not.

When the District Attorney conducted direct examination, Van Buren stayed at his table, took notes, observed. The approach that Van Buren planned and allowed Sherwood to carry out was that of picturing a William Freeman with a capacity to deliberately plan a murder, to show him moving with judgment and common sense; a man with a good memory, a will, an awareness of the difference between right and wrong. Van Buren meant to show that revenge might be Freeman's motive, or plunder, or plain depraved wickedness, and that drink had been his impetus; that his part-Indian, part-Negro heritage, and a natural propensity for evil, gave rise to his acts.

And the testimony of the prosecution witnesses did tend to construct this view of the accused. . . .

Morris and Hyatt, the blacksmiths who bargained with Freeman, thought him a canny man to do business with, sensible and clever, and they saw no sign of insanity. Simpson, the chairmaker at whose shop Freeman had ground his knives and prepared the long

club, told the court of the precise movements of Freeman, his skilled handling of machine tools, his bargaining abilities.

Freeman had vanity enough to want to look well for the murders, because the barber, Quincy, described how the prisoner came into his shop for a shave; and even his own uncle, Aaron Demun, spoke of Freeman's visit to his shop and of his request for tallow with which to grease his shoes.

Patten and Cox, the men who were on the Lake Road on the tragic night, identified Freeman as the man who had brushed by them in the moonlight: like a man who knew just where he was headed and just what he intended doing. The aged Mr. and Mrs. George Van Nest described how they had seen Freeman prowling in the vicinity, carefully meditating his moves. The farmer, George Burrington, whose horse Freeman had stolen while escaping, said he had seen the colored man in the streets of Auburn a few days before the murders. Freeman and the farmer were acquainted, they had nodded; and the prisoner had noticed the young gray mare Burrington was driving, and remembered, while running away, to stop at the barn long enough to take the horse and blanket—which showed calculation.

Freeman's captor, James Amos, the Schroeppel man, told the court of the clever way in which Freeman had entered their town, and how for hours he had held out against the great pressure of the villagers in the tavern, how he had laughed at them and kept on eating when he was accused: "I saw in him no symptoms of insanity."

Van Buren, studying the jurors while this testimony was spread, had the feeling that they were impressed with this picture of method in Freeman's crime, and moved when they heard one neighbor-witness after another deny Freeman was insane.

But Seward cross-examined some witnesses sharply. . . .

Harry Lamkin: The counsel for the people had culled the entire county for persons who knew anything of Freeman, and many had been willing to testify; such as Harry Lamkin, the tavern keeper of Port Byron, who said that two weeks before the Van Nest murders Freeman and three other colored men had stopped at his place for drinks. Freeman had even paid for the drinks himself after

he'd been in the barroom for an hour and a half and he had acted perfectly clear all that time.

"I didn't see any crazy actions in him," Lamkin said.

Seward: What would you consider crazy actions?

Lamkin: I should consider a man clawing around, acting simple, and asking a great many questions, and laughing at foolish things, crazy.

Seward: Have you ever seen any crazy persons?

Lamkin: I saw a man by the name of Owen Razee, near Sherwood's Corners, and have seen fellows on the canal kind o' crazy.*

Seward: Did you ever see a crazy person who did not talk at all?

Lamkin: I never did.

One by one such witnesses were called by the people's defenders, and their fleeting contact with Freeman explored. Many had visited Freeman in jail, after his capture, during the witness-manufacture time, and they said that he had readily answered all the questions put to him that he could understand. They swore that his looks, appearance and actions were, as near as they might be in any individual, what they were before he had entered State Prison.

This kind of evidence, or testimony, piled up. Sheriff Pettibone said that Freeman had a good appetite, was a quiet and uncomplaining prisoner. So with the peace justices, Bostwick and Paine, who turned down Freeman's application for a warrant for "the folks that sent me to prison, and I didn't do it." They thought his request for a warrant was peculiar, but no evidence of derangement.

One after the other these witnesses recounted the fragment of their relationship to the defendant, and each ended with an opinion intended to have both medical and juridical weight. Some testified for a few minutes, some for a half hour or an hour, speaking as casually on the subject of insanity as they might talk of their horses, a church bazaar, the crops, the weather, a neighbor's faults. It may never have entered the mind of one of them that insanity might be a complicated matter, that medicine itself regarded this as an un-

* A reference to Canalers, wild young men, ex-farmers, employed on boats plying the Erie Canal, described in Herman Melville's "Moby Dick" as the fiercest and most errant of whaling men.

lighted field, that the mind in health and disease was multiple-natured.

Walter Simpson——Have known the prisoner ever since he was a small boy. From what I know of him and what I have seen, I think he is sane.

Lewis Markham——Have known the prisoner twenty years, saw him every day in the State Prison for a year, as I was relief keeper, have seen him frequently since he came out . . . I never discovered any defect in his mind.

The ex-Governor would ask a witness, "Have you ever studied the nature of insanity?" and the townsman had to say he hadn't, but had seen one or two crazy fellow villagers, and thought he might recognize a crazy man when he saw one. . . .

Josiah Sherwood: The overseer of the poor, who knew Freeman in his childhood, admitted the prisoner might have been insane when he killed, and he, Sherwood, not know it. "The most I can say is, I never saw any insanity in him."

Seward: Have you ever had any cases of insanity in your charge, Mr. Sherwood?

Sherwood: Have had several cases under my charge.

Seward: Is it difficult to tell such a case?

Sherwood: I think from what has come under my observation, that there is no difficulty in discovering insanity where it exists.

Seward: Might it not be difficult to discover some cases of it?

Sherwood: Cannot say but that it may be difficult to discover some cases of it.

Police Chief Tom Munroe: Constable Tom Munroe had known Freeman since childhood. "I recollect that he was an ugly boy, and he threw stones at white boys. . . . I never heard that Freeman was crazy till since the murder. My opinion is, I never saw any insanity in him."

Seward cross-examined the policeman. "Mr. Munroe, did you ever say Freeman should be lynched?"

"I have said if they had hung him, it would have saved the county a great deal of expense. I might have said it would have

been better if he had been hung or killed. That was since the manufacture of craziness in this county."

Seward, insistently, "*Have you not said that he ought to have been lynched?*"

"If I did, it was in reference to the course taken by a certain set of men in relation to it."

"Have you not said that counsel ought to be tarred and feathered for defending him?"

"I might have said they deserved it for the course they have taken in his defense."

"Have you not made that or similar declaration, and that too, frequently?"

"I probably have said considerable about it, and somebody may have reported me."

"I desire an answer to my question if you can favor me?"

"I can't recollect what I have said. I am opposed to the course pursued, because I suppose all testimony about his derangement is manufactured."

While the examining went on, Freeman sat in the prisoner's box in about the same way as always: head down, eyes up, wearing a permanent smile just ready to break into laughter, but never quite reaching laughter.

His chains were hooked into the immoveable wooden leg of the witness chair, and sometimes the chains clanked. Freeman beamed at the prosecution and sometimes at his defenders. He may have looked a little more sharply at Seward. It seemed so a few times, especially when he heard the counsel addressed as "Governor"—as if a cloud momentarily crossed his smile.

Seward asked each of the people's witnesses about that posture, that down-under manner, and each testified that they *had* noticed that, the gesture of a man looking up at them from a slightly bent head.

Sometimes Blatchford or Morgan or Wright cross-examined. Then Seward stayed at his table and scribbled, perhaps something for his summary, or some question to be asked on counter-examination. Often he just tapped his pencil reflectively.

George Parker: District Attorney Sherwood examined George Parker, a Baldwinsville lawyer, who had known the Van Nests and helped in Freeman's capture at Schroeppel. The lawyer had been in Gregg's Tavern and had tried to pry a confession from Freeman. The colored man had held out, Parker testified, and claimed he didn't know who Van Nest was, and then Parker had lost his temper, he admitted.

Seward cross-questioned.

How, he wanted to know, had Parker got Freeman to say anything at all? Just how badly had Parker lost his temper with the prisoner?

"I couldn't get him to admit he'd killed anybody. I tried him thoroughly."

"How?"

"I boxed his ears."

"What else?"

"My feelings got the better of my judgment, and I pulled his hair a little and gave his head a little shake."

"Why?"

"I was highly excited against him and I attributed it to his playing possum and was wrought up pretty high."

"And did you not see signs of insanity in his behavior?"

"None whatever. I thought he'd played a very strong game, and seemed to rely upon silence for his fortification."

In a way a great absurdity unfolded in this court, though none could see it. As if it were the year 1491, before Columbus sailed, and in some Spanish court an endless belt of witnesses expressed their opinion as to whether the world was round before a jury of twelve who knew no more of the answer than the witnesses.

For each witness had some credence in the eyes of the jury, or full credence. Since men were passing on the unknown—and since the experimentalists of the mind were not yet recognized as scientists, nor as participants in a study that could lead to scientific understanding because their area was still unaccepted and unaccredited —the man in the street knew just as much.

George Parker knew just as much!

CHAPTER TWENTY-FIVE

A Dip into the Ocean of the Mind

The prosecution ventured out onto some thin ice. In their stable was a local doctor, the respectable Dr. David Dimon, surgeon. Medical witnesses might be decisive in this trial, Van Buren knew, and they had many doctors to call upon who had known Freeman from childhood. It was risky calling them against the nationally known authorities whom Seward would array in opposition to them, but they must meet the defense fire with its own weapons. . . .

The doctor had seen the prisoner in jail several times, he told the court. At first he had gone there to gratify his curiosity, not long after the murders, but then he had made about a half-dozen visits at request (he did not say whose request), and he stayed each time a half hour or an hour. He had had talks with Freeman about the events of his life and about the particulars of the murder. He ended his direct testimony with the statement, "I could not discover anything which I should call insanity."

Seward took over and asked, "What would you call insanity, Doctor?"

"Some derangement of the intellectual faculties, or of the passions, either general or partial."

"What do you call a derangement?"

"An alteration from a natural or healthy state," was the answer.

"What do you call the intellectual faculties?"

"The faculties by which we reason, compare and judge."

"Where do you find this faculty of judgment described?" Seward asked, to learn whether Dimon had ever studied the subject.

"I have not given it from any author which I can name."

"Is there any such faculty as the will?"

"I don't know as the will could hardly be called a faculty."

Seward suspected that Dr. Dimon knew little of the nature of insanity. "What is the will, then?" he tested.

"The will is a power, a determination of the mind to do something. I wish to avoid going into a metaphysical discussion."

"What kind of a power is the will, physical or mental?"

"It belongs to the mental powers."

"What is the difference between the mental powers and the intellectual faculties?" Seward asked, setting the first of endless traps for "authorities" like Dr. Dimon.

"I don't make any difference."

"Then you do call the will an intellectual faculty?"

Dr. Dimon shifted in the witness stand and worked his fingers nervously. Suddenly he saw a reason why this man had been twice Governor of the state: he was a politician, yet probed deeply into the medical knowledge that should have been the doctor's.

Dimon answered, "I should be glad to avoid any metaphysical discussion about the will. I am not now prepared to go into it. The will is an operation of the mind. If the passions or affections are in action, they determine the individual to do something and that is called the will."

"Have you any experience in the treatment of the insane?"

"I have not. I have seen many in the Alms House at Philadelphia."

"Have you ever treated a case of insanity professionally?"

"I have not. I have seen cases of melancholy which I have treated as the first stage of insanity."

"Is not the mind more or less diseased in a case of settled melancholy?"

"The mind is diseased, yet some people compare, judge, recollect and imagine well, notwithstanding."

"Are all the prisoner's intellectual faculties in order?"

"All that he possesses. I cannot discover that any of them are deranged."

"Do you believe in an insanity that disturbs the moral powers or faculties?"

"Yes, and without any appreciable disturbance of the other faculties."

"Then you admit that moral insanity may exist?"

"I admit the principle of moral insanity as a disease of the brain."

"Are Freeman's moral powers in a healthy state?"

"I suppose that they are as they were by nature; that is my opinion now."

The questioning and the answers had entered into an area that would figure throughout the case. The unknown equations in mental health, the classifications of mental disease. Where was the border line between sanity and insanity? What was the demarcation between normal behavior and violation of the law? To what extent was law itself "a form of sanity," and sanity an adjustment to law? And at what point was law violation possibly a form of insanity? Where did values, behavior, morality enter—or leave—in these subtle relationships?

Seward asked Dr. Dimon:

"When you were looking after symptoms of insanity, what physical appearance of insanity did you expect to find?"

"In the maniac there is a wild, glassy expression of the eye, and generally a paleness," the doctor answered. "Besides those, there are a good many other looks and expressions indicating insanity, which may be detected."

"Do maniacs frequently smile?"

"They do, and their smile is very peculiar and unmeaning."

"Is not the smile of the prisoner peculiar?"

"Well, perhaps it is, yet I don't think it indicates insanity."

"What is the degree of his intellect?"

"It is difficult to tell by any examinations that were made there in jail. He was there to be tried for life; oppressed with the weight of his crimes; ignorant and deaf, to be sure, but with every motive to conceal and deceive."

"What are the symptoms of dementia?"

"Demented persons are submissive, and easily controlled; having no will of their own, they are subject to the will of others. They

are also destitute of passion, or only capable of being momentarily affected; and are incapable of any prolonged effort."

"Might not the prisoner have been partially demented without your discovering it in jail?"

"I cannot say what might be. I saw no evidence to satisfy me that he was."

"Might he not have been laboring under an insane delusion on the twelfth of March, and yet you not discover any evidence of it?"

"I cannot answer as to what might have taken place before I saw the prisoner. I saw no evidence of delusion there in jail."

Seward dismissed the witness.

But the Attorney General, at his table, was visibly annoyed with Dr. Dimon's performance. The doctor had been expected to testify better than he had. Van Buren felt that Seward had weakened him.

Before Dr. Dimon could leave the stand, the Attorney General raised a finger; he had a question to ask.

He came forward, stood squarely before the doctor, and asked sternly: *"Do you mean to express any doubt as to the sanity of the prisoner?"*

It seemed at the defense table that the good doctor replied like a half-frightened man. What was at stake . . . some friendships, his reputation, his medical practice?

"No, No! I think he is as sane as he ever was!"

The physicians were as much at variance in defining "moral insanity" as they were in classifying the whole list of forms of insanity. Originally the term derived from Pinel's "moral treatment" of the insane, giving them kindness, good food, fresh air and love. This moral approach soon veered over into an actual conception that there was a form of insanity itself that might be called "moral insanity," a derangement that wasn't as bad as advanced insanity, such as dementia. Dr. Eli Todd, in the 1820s, founding the Retreat at Hartford, set out to apply Pinel's methods of handling the insane, and his work led him to this definition: "Insanity in most cases is a disease in which the moral and intellectual faculties are not destroyed, but some one or more of them are in a morbid condition." The term "moral insanity" came into fairly broad use, with men beginning to debate whether there was such, and what it was, and

how it applied and to whom it applied. The conception of a compartmentalized mind, which could be partially affected with insanity, prevailed and ranged amorphously in the medicine of mental hygiene until the year 1882 when Charles Guiteau was executed for the assassination of President Arthur Garfield. He was defended on grounds of "moral insanity," but the authoritative opinion was put forward by a prosecution doctor that he could not conceive of any moral act without an intellectual or mental operation accompanying it; man's mentality was a unified process; moral insanity, in essence, was an unlikely category and an unscientific conception. From that time on the concept of "moral insanity" has slipped into disuse.

As the Freeman trial went on there was less and less reference to "moral insanity" as in any way applying to the accused, but constant allusion to "dementia," the disease attributed to the prisoner by the defense.

CHAPTER TWENTY-SIX

Bitter Witnesses, Bitter Truths

Eminent doctors from distant parts of the state had been coming into the village by train during the week. As if to complicate matters for the prosecution, it seemed that the town itself was growing. Not only had a new newspaper been launched that month, but two trains stopped at the village daily, whereas, until a week or so before, there had been only one train a day. Each time the whistle blew at the depot in front of Auburn Prison a new medical authority got off, hurried to the Seward offices, and went to see Freeman.

These doctors were the biggest obstacle to the people's case, Van Buren knew. Their testimony primarily stood in the way of a guilty verdict. The prosecution couldn't forget that in the first trial of Wyatt the word of the doctors had been powerful enough to secure a split jury. Seward seemed able to get the support of the best men. He had even had here in town, for the preliminary trial of Freeman, the former Health Officer of New York City, L. C. Doane.

On the fifteenth of July, well after the trial was on, two more physicians arrived. These were Dr. Thomas Hun, a professor in the Albany Medical College, and Surgeon General of the State, Dr. James McNaughton, also a professor at the same college. As soon as they arrived, they got in touch with Dr. Amariah Brigham, and the three big men went to the jail to see the prisoner.

Word of the arrival of more experts reached the ears of Attorney General Van Buren.

There they go again, still plotting, he reasoned, organizing a case of insanity for Freeman where none existed, with Seward using

his influence as an ex-Governor to get these prominent men on his side.

It struck Van Buren that the jury verdict that Freeman was "sufficiently sane," could be so construed as to mean there was no question about it. If he was sane, and a court said so, why should anybody else need to examine the prisoner in his cell? That matter was settled. What was necessary now was a little show of "legal force." What was he Attorney General for, if not to protect the people?

The next morning, Thursday, July sixteenth, Sheriff Pettibone barred the way to Freeman's cell when Drs. Hun and McNaughton returned to resume their tests.

The sheriff stood in the hallway before the entrance to the cell block. Arms folded, he said, "Sorry, gentlemen, I got orders."

For three days Van Buren brought on his witnesses. They who had known Freeman in his childhood were expected to testify that he was the same today as he was then, no different, and they knew of no change that had come over him after he had been sentenced to Auburn State Prison. He was difficult in childhood, he'd always been difficult, and he was now. He had stolen hens in boyhood and been known to drink in his adolescence, and to swear, and to run away from his jailers. He had always argued over pennies and shillings with whoever had employed him; if he was a morose individual now, why it was because his mother was part Indian and it was well-known that Indians were taciturn and, with white men, morose. So the small detail of his days was brought out, with the right emphasis, for Van Buren knew how to bring out what he wanted brought out.

Juridically the trial was developing a special characteristic—an assault on credibility—with the people's lawyers geared to discredit the authority of the defense physicians, and the defense well briefed in the lives of the people's witnesses.

Seward, whose own private and public life was free of acrimony (Lincoln called him "a man without gall"), detested gossip, slander, the denigration of individuals. It would be the comment of historians subsequently that his personal conversation and his letters were almost miraculously free of these pettier traits of some public per-

sonages. But now he was in a battle, in a kind of darkened room, for the life and death of a principle—and a human being. He must use every tactic and be unsparing; so the traditional one of discrediting the other side's witnesses had to be brought mercilessly into play.

Nathaniel Lynch, farmer and cattle dealer, felt the sting of Seward's sharpness after he gave devastating testimony against Freeman. Lynch had been one of the numerous villagers with whom Freeman had lived in his childhood. Sixteen years before, William and his mother, Sally Freeman, had stayed with the Lynchs for a time. But, said the farmer, Sally was a drinking woman and Bill ran away all the time, so they couldn't keep them. Lynch hadn't seen Freeman again until this past winter, and then Freeman worked for him for a few days. He helped the farmer kill hogs, carry meat, ran errands, ". . . all very sensibly," said Lynch, "and I didn't think of such a thing as insanity. Aside from his deafness I never discovered any want of apprehension in him." Lynch went on like that, detailing Freeman's sound acts, and the sensible talk he had had in jail with Freeman about the murders. He was so willing a prosecution witness that Seward moved in upon him swiftly.

Had the counsel for the people asked him to go to the jail and speak with Freeman? No. What church did he belong to when Freeman lived with him long ago? The First Presbyterian, answered Lynch. Had he taken Freeman to church? No. Nor had he given him any religious or moral education. Here Lynch repeated that he had found Bill's mother "intemperate." Seward asked him if he still belonged to the First Presbyterian Church. No, he did not. How had he ceased to become a member of that church?

Lynch hesitated. Then, ". . . I am not under obligation to tell how I ceased to become a member of it."

"I have to insist. . . ."

". . . I don't have to say——"

"Were you not in trouble with Hannah Morreson, and is not that the reason you had to leave the church——"

Lynch reddened. "I was charged with having had unlawful intercourse with one Hannah Morreson. That offense was never proved against me in a legal way."

Seward may have succeeded in leaving with the jury the im-

pression that the man who had passed on Sally Freeman's morals perhaps had some obligation to the authorities to be serving so ardently as their witness.

Nathaniel Hershey, a colored witness, a long-time acquaintance of Bill Freeman, told the court that Freeman had threatened to kill the Van Nests a day or two before he actually did. Hershey, who lived in New Guinea, was twenty-three and a workingman about the town, such as Freeman had been, a sawer of wood and a driver of cattle.

Van Buren asked him what he knew and Hershey described how, at Gale's Grocery, Freeman told him that he at last found the people who sent him to State Prison. They were the Van Nests, Freeman said. "Who?" Hershey had asked, and Freeman had repeated and laughed about it. Moreover, he had knives on him then, and he gave a knife to Hershey, and Hershey accepted it. He had also told Hershey he intended killing his brother-in-law, John De Puy, because John had gone to Gale's Grocery and told them not to let him have liquor.

To the prosecution Hershey's testimony revealed a slayer who had premeditated and even announced his objective. Could anything be more calculated than that? And this was the effect Van Buren sought to establish with the jury.

Yet to Seward, if Hershey was believed and Freeman *had* threatened to get the Van Nests, then it only further confirmed the man's insanity: for why attack the Van Nests? Because John Van Nest wouldn't give him a job? That was hardly a reason for a massacre. Because he had lived near Van Nest in his childhood? There was no reason for murder in that. The prosecution witnesses, Cornelius Van Arsdale and Helen Holmes, had testified that the Van Nests had no knowledge of Mrs. Godfrey or of the stolen horse. How then had Freeman formed the idea that the Van Nests had sent him to prison? Only delusion could explain it, the growing mist in the mind of the prisoner, his need to strike somewhere. There *was* no motive. If Hershey was right, then dementia was the only possible conclusion that could be drawn. Freeman had gone to the Van Nests only because he needed a point at which to begin his cause and his work, the letting of white blood endlessly. He had to

begin somewhere, and the Van Nests were far out of the village and unprotected, and Freeman could reason that clearly, could see that there he had a chance of beginning his "work" successfully.

In the maze of half-reason and no reason which was then impelling Freeman, he had possibly decided in advance where he should begin, and he had gone out there and he *had* begun.

Here was the mystic area of Freeman's mind—hooking up the past with the present—threading together the tragedy of his years —and going back to the Van Nests, scene of his childhood, seeking the symbol of his life—and even striking at the baby, George Van Nest, as part of the retaliation and the symbolization.

On the third day, the twenty-fourth witness to attest to Freeman's sanity was called: Dr. Leander Bigelow, one of the swarm who had descended upon Freeman during the period of witness-manufacture, and he told the court of his detailed testing of Freeman. How many days in the week, Bill?——How many months in the year?——and other elementary questions.

"That man remembered everything," the doctor said, "knew just what was going on all the time. I found a man I consider of low intellect, and of very limited knowledge, but I saw nothing to satisfy me he was insane; not enough to satisfy me. I suppose he was put in prison at fourteen or fifteen, and had little chance there. I'm satisfied he is deaf in one ear and partially deaf in the other, and can hear but few words, but he's sane all right."

"The people rest," said Van Buren.

The Attorney General and the District Attorney believed that they had demonstrated that William Freeman knew right from wrong—the fundamental legal test of insanity in America and Great Britain—and that the prisoner had memory, judgment, reason, common sense, like everyone else. Their witnesses, those who had had some contact with Freeman and had seen him act with apparent directness, had pictured the preparations for the crime, then the crime itself, his escape, the capture: and their total testimony tended to depict the brutality of the massacre and the deliberateness of the criminal.

Counsel for the people seemed satisfied for the time being to have presented their witnesses in that way.

CHAPTER TWENTY-SEVEN

The Prophecy of "the Thousand Evils"

There was no singing in New Guinea.

The weekend gatherings were suspended, without anyone quite being aware that they were not being organized.

The spirituals and folk tunes that grew up in the village, or were brought there from the South, or the church psalms—all these fell into a sad desuetude. If anyone broke into a whistle, or a fragment of a hum, it was an incident and an accident of forgetfulness, and then he checked himself and thought of Bill Freeman in court, or imagined the Van Nests in their graves, or wound up seeing "the Governor" standing in a courtroom ranged against his folks and his time, doing a strange white man's thing.

There was no music, and no mellow chant mingled with the summer's green, either on Grove Street or Chapman Avenue, the two streets of New Guinea.

The Van Nest murders had a unique meaning for that particular moment in Northern and New York State history. Technically the colored people had been freed in the Empire State in 1827, but their condition was a little like that of the freed slaves was to be after the Civil War. Free for what? To take part in the life about them as economic equals? Not quite. Free to be educated in public schools? No. They were manumitted, but there weren't even segregated schools for them.

In a town like Auburn, in 1846, there were only a dozen or so

colored children and these were put out to work, as was Bill Freeman, before the age of ten. There was want and neglect among the small colored settlements in the various Central New York villages. They were free and not free. Bill Freeman was an abject example of how far this "slavery within freedom" could go.

But it was not primarily or exclusively Freeman, a Negro, that Seward and his partners were defending. No. Not even the profound antislaver, Seward, had taken this case because the defendant was colored. It was the special principle of truth-seeking in social relations that Seward was supporting, and the defendant chanced to be a Negro. Wyatt had been white, and he defended Wyatt as vigorously as he now did this colored man. It was time, he felt, that error and ignorance in all of its guises must be grappled with, and if there were social forces that made men mad, and if there was little-understood disease that affected men's brains and made them mad, this small digit, the human being himself, simply could not be held to account. Let them look into man's background and see what was in it and alter and amend and transform that background. This and a myriad of auxiliary thoughts and considerations were his motivations, and he wanted to weld them into one whole defense, and if now they called him abolitionist, why then, possibly, some other day they might call him legal pioneer, sociological groper, human scientist.

Yet the fact of Freeman being colored had converted the test of insane murder into a political flare-up of statewide proportion, and he must contend, in full, with the color aspect of the case.

Seward understood the Negro issue as a radial process in the life of the growing nation. The color question was to the fabric of the country what the stain was to the bacteriologist, illuminating the life. Slavery and color formed a nodal point in the growth of national philosophic value. It was like a gland in the national process, and there was no understanding of the formation of the Union without comprehension of this inner axis of slave labor and African culture.

As Governor, Seward had prophetically written to two Canadian Negro leaders, "Slavery has brought a thousand evils which affect the whole American community, and will long survive the cause that produced them." In that, and in a score of kindred statements he

beheld the coaxial relationship of the slave process in the growing society.

The present case was a perfect instance in that it united a question of mental disease with the most contemporaneous social and political process. The one illuminated the other. Color operated gyroscopically in the national destiny, filtering the whole American consciousness.

Once, the Indian had been the great source of the nation's drama and the romantic inspiration of Cooper. The age of exploration had once impelled the poets and the historians, as in the writing of Washington Irving. Hawthorne had found truth and reality in the country's Puritan origins, and Thackeray in the contrasts of Virginia planters. Seward knew that the high drama of the nation, the great tragedy, was in the story of the slaves.

William Freeman was, in his insanity, all-significant, possibly the main actor in the human circus. Five blows with his knife arm and there was a flashing across the land like lightning bolts, not mere knife wieldings.

The slave question, and the Negroes as a people, reached into the heart of the nation's life, colored it, permeated it, gave it its national character. It was as if the nation had a duality, its white free side troubled sometimes by the surging of its black slave side. They were constantly at war, one influencing the other, and it was this inner action of influence, the slave upon the master, the black upon the white, that astonished Seward whenever it appeared. The slave question had become a design underlying the whole Union. It penetrated every nook of public and private life, it was in the mind and morality of the people. It was no surprise therefore that it had sifted into medical and psychical areas—and that when the issue of insane murder arose, the fittest subject might be a free colored man —with all that he had lived through of his own country.

And now William Freeman sat in court with laughter upon his face, an incessant jest written there, as if he held the secret of it all, which he did: this insane Punchinello spawned of slaves, bred in Christianity, moulded by contradiction.

CHAPTER TWENTY-EIGHT

"The Mind Itself Is Immaterial and Immortal"

While the lava of science and law and bigotry flowed in Auburn, the rest of the world moved through the hot summer, and in the village they took some note of what was going on elsewhere: how the English were abolishing the Corn Laws, and the Irish, threatened with famine, were flocking to the seaports to emigrate to America. The College of Cardinals elected a new Pope, the young and obscure Mastai Feretti, to be known as Pius the Ninth. On the Rio Grande, war raged with Mexico, and one regiment after another left the East for the Southwest. President Polk asked Congress for two million dollars to buy peace and territory from Mexico, and Congress debated the proposal. The Oregon dispute was closing, and there would be no war with Great Britain, and the 49th parallel had been fixed as the boundary line. Covered wagons were being filled at that very moment for the long journey across mountains and plains to bring a new run of settlers to the banks of the Old Columbia River.

All that was doing . . . but in Auburn there was a thirst for death, an orgy of hanging sentiment, and a will to go backward in time. . . .

In this milieu the Freeman defense prepared to call its witnesses.

Lawyer David Wright opened the defense with the solemn assurance that his real reason for participating was that, if Freeman were convicted by public clamor and contrary to the evidence to be

given of his insanity, it would be a greater calamity to the country than the death of those who had fallen by his insane hand.

"The learned district attorney has told us that this is the most important trial that has occupied the courts of this country for the last half century," and he, Wright, did not believe that its importance was due to the insanity plea, but rather to the fact that it was important to learn whether "in the demon thirst for blood, an unchristian thirst for revenge, a fair and an impartial trial, by and before a jury of the country was possible for this once a man, this now but a clod."

So it seemed to him, who may not at first have foreseen the implications of the trial to the current political scene, to the antislavery movement, and to the advance of medical jurisprudence. To him the trial's chief importance was as a case in civil liberties, and in the excited hour in which he addressed the jury, it was doubtless just as well that he placed the emphasis there.

He glanced around the room, then rested his view upon Prosecutor Luman Sherwood. . . . The counsel for the people had behaved in a way repugnant to good taste, Wright continued. Sherwood had vilified the defense medical witnesses, telling the jurors they could expect from such witnesses opinions comparable to necromancy, divination and other realms of fantasy. That was zeal on the people's part.

These medical witnesses, including Dr. John McCall, the President of the State Medical Society, and Dr. Amariah Brigham, the Director of the Utica Lunatic Asylum, had come to Auburn without pay, their only interest to further their scientific work and to place at the disposal of the court their experience and study—and Sherwood's denunciation of them as dealing in a realm of fantasy—before they even testified!—was an act of great contempt.

As to the plea of insanity, the lawyer said, "This is no new plea; it is, and for centuries past has been well known to the common law, and it is now also incorporated into the law of the State," and he then quoted the law:

> No act done by a person in a state of insanity, can be punished as an offence; and no insane person can be tried, sentenced to any punishment, or punished for any crime

or offense, while he continues in that state. (2 R.S., 697, Sec. 2)

Wright then denounced the verdict of the preliminary trial which had ruled, "We find the prisoner at the bar sufficiently sane in mind and memory to distinguish between right and wrong."

"And is *that* sanity?" Wright asked.

"I will venture to assert that there is no court claiming to act according to any civilized notions that will so hold. . . . The lowest standard which is ever required in questions of this kind is that the accused shall be able to distinguish right from wrong."

But Freeman, said Wright, had no motive whatever. In fact, the word "motive" was inadequate to be applied in his case. Freeman had no ill will against any of his victims; they had never offended him; his object was not plunder; he took nothing. No motive whatever had been or, Wright thought, could be assigned to the deed. Can we believe, therefore, that a sane man could thus slay his fellow man? He did not believe so.

Even so it was the defense's obligation to provide affirmative evidence of Freeman's insanity, and what, he asked, was the definition of insanity that now had legal recognition?

It was the definition of Dr. Isaac Ray, who said in his *Medical Jurisprudence:* "It should be distinctly understood that it is first, a disease of the brain; and secondly, that in its various grades and forms, it observes the same laws as diseases of other organs."

Wright quoted Dr. Brigham, who would be the principal witness for the defense. Brigham had already written: *There never can be insanity without disease of the brain.*

Dr. Brigham held that the mind cannot be diseased, because the mind itself was immaterial and immortal, and incapable of disease or change. "If the mind can become diseased, or changed, it may die, like other organs of the body," Brigham believed. "But, it being connected with the brain, by which it operates in this life, when the brain becomes diseased, the mind becomes disordered in action; just as when the stomach is diseased the digestion is disordered; or when the lungs are diseased, the breathing is disordered.

"But the brain is such a delicate organ, it cannot bear much disease. Sometimes in insanity we find but little trace of disease, so

trifling as not materially to disturb the health. Hence we find the most preposterous ideas and notions kept up for years, and but little disease of the brain. The brain, being the organ of the mind, when that becomes diseased, the mind becomes disordered."

The prosecution, Wright said, had made much of the fact that Freeman had memory and judgment. But was there ever an insane man who had not? Nothing short of utter and total imbecility can destroy that organ.

He again quoted from Dr. Ray who had said, "Generally speaking, after the acute stages have passed off, a maniac has no difficulty in remembering his friends and acquaintances, the places he has been accustomed to frequent, names, dates and events, and the occurrences of his life."

This, Wright said, applied fully to Freeman, to his murders, and to his subsequent restoration of memory and capacity to recall and speak.

Wright concluded that the people held that the defense had upon it the *onus* of proving insanity—"that inasmuch as men are generally sane, and we claim the exception, we must show, affirmatively, that such is the case. . . .

"Well, gentlemen, however hard, and allow me to add, somewhat absurd, it may appear to require a crazy man to prove his insanity, yet I suppose such is indeed the law of the land, and we must conform to it!"

Then, as the first defense witnesses were called, both sides moved precipitately into uncharted areas of the human consciousness, wherever question and answer would lead them.

The jury listened to all manner of philosophy; and some of it penetrated, and much of it went over their heads. Some of the meaning was lost even upon Judge Bowen Whiting and the associates who sat on each side of him: and there were moments when the issue narrowed down to battles of intellect between the principal witnesses —medical men—and the prosecution, as a groping and growing science conflicted with the metaphysics of the mind prevalent in the year 1846.

CHAPTER TWENTY-NINE

The Mass Psychoanalysis of William Freeman

"This strangest of all trials," as the prosecution itself had called it, moved into its defense stage with a new set of villagers, these on the side of Freeman and Seward, posing as alienists. Now it was Seward's turn to call scores of villagers who had participated in the mass psychoanalysis of the prisoner on his iron "couch" in the county jail.

In a frenetic and bumbling way these townsmen had enacted a kind of assembly line examination of Freeman, their actions accidentally anticipating many of the known processes of psychiatric examination to prevail a century later. Without instruction from medical men, or lawyers, or experts or specialists of any kind, the townsmen had entered Freeman's cell, tested his common sense, his memory, intellect, philosophic outlook if any, his knowledge or ignorance, emotional reactions, his general over-all characteristics, and the possibility that his behavior patterns might have changed while he was in State Prison.

Dr. Blanchard Fosgate: Attorney General Van Buren disputed with Dr. Blanchard Fosgate the definition of idiocy, and the relationship of this condition to insanity. The doctor had dressed Freeman's wounded wrist after his jailing, and he believed that the prisoner had no idea of right or wrong. Freeman was so insensate, the physician said, that he didn't even have the capacity to distinguish between the consequences of killing a man or a beast.

Once, he had spoken to Freeman as kindly as he would to his own children, telling the man that if he wanted anything, to let him know and he would get it for him; or, if he was sick, tell the jailer and he'd come see him. But Freeman made no reply, showed no sign whatever of gratitude. The prisoner didn't even seem to care whether his wound was getting better; he never asked a question.

"I look upon him as a person who is sinking into idiocy," said the physician.

"What do you consider idiocy?" Van Buren asked.

"I consider it a specie of insanity."

Van Buren sought to discredit the doctor's medical knowledge. Classifications of the varying stages and kinds of mental disease were then nebulous, unformed, unscientific. A good portion of the experiment and research of that day was with a view toward defining and establishing such classifications.

"Do you know Dr. Brigham?"

Brigham, the principal authority on insanity in the state, stood as a shadow and a threat over the prosecution, and Van Buren meant to shake the faith of the jurors in the defense's most important witness even before he was called to the stand. Dr. Fosgate answered that he knew Brigham.

"Is he much of an authority?"

"When I know he is correct, I think he is good authority. When my own knowledge does not contradict his opinion, I think his authority as to insanity is of the very highest order."

"What did you say idiocy was?"

"I understand idiocy to be partial dementia, or entire dementia, or fatuity. If Dr. Brigham thought differently, I should think the difference consisted mainly in a different classification of diseases."

Van Buren asked, "What if the law should say that idiocy was not insanity?"

The doctor didn't like being ridiculed in his own field by a lawyer, and he reddened as he lifted his voice. "*If the law should say that idiocy was not insanity, then I should think that the law could not impose any rules or regulations upon the human constitution, as it is given by the Almighty, and would not make any difference with the fact.*"

Van Buren turned to another point. "You said that so far as

any moral principle is concerned Freeman wouldn't know the difference between killing a man or a beast. Do you suppose Freeman thinks they hang people for killing beasts?"

"The mere statement that he knows that they hang people for killing men, and not for killing a beast, would not change my mind as to his sanity. I don't suppose he thinks they hang people for killing beasts. I think a sane man wouldn't smile, situated as the prisoner was."

"What do you mean by his indifference to remorse?"

"I mean he makes no signs of sorrow at his doings. I think he does not care for anything he has done. He is only sorry that the child wasn't bigger. He does not care for killing this family; and that circumstance goes with the others to make me think he is insane."

Van Buren let him go. The doctor might not understand idiocy in relation to the question of sanity, as other physicians did, but he was deeply honest in his conviction that Freeman wasn't responsible.

Dr. Levi Hermance: In that day some men practiced medicine after a few years of experience as pharmacists, somehow securing medical licenses; others became doctors by perseveration; and now Attorney General Van Buren mercilessly cross-examined a witness for the defense, Dr. Levi Hermance, drawing from him, answer by answer, facts that piled up in a numerical way: 1) He was thirty-eight; 2) He'd practiced medicine for twelve years; 3) He had always used some of the medicines that Alopathists and Homeopathists use; 4) Yet he was esteemed a Thompsonian practitioner; 5) He was never a practitioner in the old line; 6) He worked on a farm until he was seventeen; 7) Became an agent in a woolen factory; 8) Then practiced medicine some; 9) Had sold goods at auction; 10) Had been admitted as attorney in the court of common pleas; 11) Was never appointed auctioneer, but sold goods under a license of a gentleman in Fleming; 12) And was now a turnkey in the prison.

An incident had taken place during Dr. Hermance's cell interview with Freeman that Van Buren prepared to make the most of. The many-sided doctor had been there with another physician, Dr.

Pitney, and these medical men, testing Freeman's sense of right and wrong, had asked Bill if it would be right for Dr. Hermance to kill Dr. Pitman. "Why," Freeman had asked, "because he is the smartest man?" No, they were both alike in smartness, Dr. Pitney explained. Pitney then repeated the test question and Freeman answered, "That would be bad."

Suddenly, Van Buren shot at the multiple-vocationed Dr. Hermance: "Comparing yourself with Dr. Pitney, who is the more profound?"

Dr. Hermance, the assistant keeper at the State Prison, took that worm and hook into his mouth and ran with it. "I think in Surgery and Medicine he is a far greater man."

How could that be? the Attorney General continued to play with him. Did he think Dr. Pitney would lie? Hadn't Dr. Pitney said they were both alike? Didn't he believe Dr. Pitney when he said that? Surely Dr. Hermance need not be so modest, he was as great a man and as profound as Dr. Pitney. Hadn't Freeman when he said, "because he is the smartest man" referred to Dr. Hermance?

"Well, I suppose he did," the doctor answered solemnly.

Could the doctor describe a disease?——"I profess to be able to."

Was insanity a disease?——"It is called so."

Would he be kind enough to describe it?——"I said some things about Freeman's insanity could be described, but some things in this case could not be."

"Well, describe what is describable." Something in Van Buren's manner indicated he was getting ready to let Dr. Hermance get off the stand.

"I can name his looks, his appearance, his voice, his wanting pay and many other things."

Had the prisoner's remark about him being the smartest man indicated insanity?——"I thought it did."

When the spectators stopped laughing, the Attorney General resumed, in the manner of an interlocutor questioning "a straight man." How many times had Dr. Hermance heard Freeman count? ——"Twice. I thought he did his best."

"Could a sane ignorant man do more?"

"I suppose not; but the appearance indicated insanity in this case."

"What appearance?"

"His rolling eye, for one thing."

Q. But does not your eye roll?

A. Yes; but there was something peculiar about it in the prisoner.

Q. What was that peculiarity?

A. Well, I cannot describe it but it was peculiar.

Q. It was sharp, was it not?

A. Perhaps I should say it was sharp.

It was Van Buren who was sharp.

His voice was strong and it could be heard all through the courtroom. He intended to amuse the spectators and the jury, and endear himself to them with his histrionics. He had long since learned what was called the "display exercises" of the profession, and he had a certain superiority over Seward in this respect.

Seward was quieter in the dock. The villagers had to crane to hear him, and those in the rear couldn't hear him. Early in life he had had a catarrhal condition, and it had left him with a low, thin, even unpleasant voice, a voice with neither melody nor range. He couldn't sing, as a consequence, and he didn't try to. When he talked, he had to win with conviction, persuasiveness and the strength of his argument. But he took on a power of rhetoric and logic; he was a scholar, and he could make others understand what he understood. He won points with his earnestness, his stylized and perfect English, the wit and common sense of his examination, and his air of erudition and certainty.

Van Buren's whole facile manner suggested one who could have traded horses cleverly and made a piece of change, in the expression of the time. Seward could not. Once, in fact, as Seward prepared to go away for a long trip, he did have a horse to sell, but he had no asking price and no selling price, as most horse traders had. A neighbor came to see the horse, and this prospective buyer started to point out the horse's faults: the wind was bad, and the speed was poor, the gait was ragged, and the hoofs and hocks and

pasterns could be better. Seward listened to his neighbor, and then called the helper who took care of the barn property, "Peter, take the horse back to the stable," which was done. The neighbor looked surprised, and asked why. Seward said, "If he has half the faults you say he has he is not worth your buying and my selling, so let that be an end to the business." The neighbor thought a moment, said he'd never seen a horse sold that way before, but he'd take the horse at Seward's price.

It was part of Seward's faith and directness and honesty to deal that way, and in that way he continued to call witnesses.

Seward called secondary witnesses who attested to Freeman's vitality in his youth. They had known him then, or during his prison years, and they had probed into his thoughts recently in his jail cell. They had watched his return to the village, or been to the Van Nest house at the near lynching, or hallooed at him through the bars of his cell, and one by one they came forward to put together the fragments of his life. The colored told of their connection with him at dances, the "meeting house," or in work situations. Others, white and colored, remembered his father, Harry Freeman, who died of an accident seventeen years before while he was serving white folks. They knew Grandfather Harry Freeman who had died since the tragedy, and they described how the accused had been born among them and reared among them, neglected and pushed around among them. The Village President and the clergymen, the prison guards and the farmers who lived on the edge of the village and sometimes employed him—all testified.

From infancy he had gone from one white home to another, to run errands, to accept some kind of benevolent protection in return for working, to live in some kind of free-slave status, neither a chattel nor a free-labor child, but a black child to be temporarily adopted here, and transiently used there, to be spanked at whim, to be whipped as his masters felt called upon to exercise their guardianship: and William Freeman, motherless, though his mother lived, and fatherless, and in a very real way homeless, wandered, and sometimes he ran away; and without schooling or religion or love, he grew, and what would be in store for him, would be in store . . . and what the village was reaping for what it had sowed,

it was reaping. As he reached adolescence he went through the village streets carrying his saw, a boy-workingman looking for labor, and the villagers bargained with him, and he had these odd jobs, and they used him and paid him a few shillings and sent him on.

Repeatedly Seward drew from the witnesses who had known Freeman in his boyhood that there was insanity in Freeman's family. That was an important point, Seward knew; he wanted to show there was a predisposition, and the harsh experiences the colored youth had had may have triggered an inherited tendency in him. His doctors were going to say that a family background of mental disease was important to consider.

Freeman's uncle, Sydney Freeman, had been crazy for many years. Everybody in the village knew the principal characteristic of Sydney Freeman. Sydney told anybody who happened to be at hand that Christ was in his throat, choking him. He wandered through the streets of Auburn, his hand clutched to his throat, where Lord Jesus had hold of him.

John De Puy, the brother-in-law of Freeman, described Sydney. "I know Sydney Freeman, the prisoner's uncle, and I know his aunt Jane Brown. They were both crazy and Sydney is crazy now. Sydney said Christ was in his throat choking him."

Dr. Leander Bigelow, the prison physician who regarded Freeman as dull, ignorant and stupid, but not insane: "I have not seen Sydney Freeman much of late years. I think him an insane man, I remember his insanity from the singularity of his delusion. He imagined that Jesus Christ was in his throat, choking him."

Sally Freeman, the mother of the prisoner, in her few moments on the witness stand, told of Sydney, with the Lord in his throat, and Jane Brown, the crazy aunt who "come back to health before she died."

So the background of William Freeman sifted out onto the floor of the court, chaff and wheat and dust of the earth, for the spectators to judge and the jury to judge and the judges to judge.

Still, Van Buren, cross-examining each witness, drew from them the small hints of Bill Freeman as an unruly boy, rebellious, a runaway, learning to drink and swear and make small thefts.

As the defense witnesses came on, an extraordinary general fact made its appearance. Most of the Auburnians, perhaps nine tenths of them wanted to see Freeman hanged, yet among the remaining small one tenth there were many of the respectable elements of the town, farmers, businessmen, lawyers, who had become convinced that Freeman was indeed insane, and they were willing to go into court to tell what they knew. Seward had acquired a core of supporters!

They were not numerous, some were timid on the stand, but they were enlightened, vocal and ready to stand up like good soldiers in the service of their local Gideon.

Thereon Green had been keeper in Auburn State Prison five years before and he had had charge of Freeman in the forging shop for about a year: "The condition of his mind was such that I didn't think he had much at any time. I think he ought not to have gone at large, and I said so when he left the shop."

Philo H. Perry, a businessman: "I heard Governor Seward try to talk with him in jail, but to little purpose. I think he has no idea of the enormity of his offence. I asked him if I should tell the jury he was crazy. He said No. I asked if I should tell that he was sorry. He said No."

James R. Cox, the man in the cutter who Freeman passed by on the Lake Road on the night of the murders: "I have seen him in jail when I could not get the semblance of an answer. I am not able to say that he is particularly deranged, because I do not think that he has much brain to be deranged. I think he approaches an idiot. If he ever had much brain I should think it had decayed."

The neurologists' techniques were lacking: they did not have clinical tests of blood or spinal fluids to determine the disease, if any, in the prisoner's system; nor had they X-ray. Psychoanalysis was unknown, but in this type of approach every visitor engaged in a crude kind of way, calling up Freeman's memory, searching his earliest years, tracing his filial and sibling relationships.

Mostly they gave him psychological tests, though the word "psychology" never appeared once in the whole trial. This they could undertake with a will and a vengeance: testing his personality, his mental functions, his common sense. And though these probing,

groping oral thrusts could never reach the deep psychosis (unknown word then) which troubled the subject, they bombarded him with their sensible and nonsensical questions. They felt he needed to be studied, and though most knew beforehand whether they wanted to find him sane or insane, in spite of themselves they were anticipating the later amorphous and controversial area known now as psychiatry.

All this, though not evident then, was there in the testimony taken in court. Each witness told how he had visited Freeman in the jail, and after he had recounted the details of his experience with the inmate, the prosecution or the defense asked: What did you find? What did you ask him? What did you test him for? What did you look for?

Warren T. Worden: This respectable village attorney, with the wide law practice, had visited Freeman at the time when two physicians had dressed the wounded wrist of the prisoner, and Worden formed the impression Freeman was insane because he showed no sign of pain. The prisoner's vacant smile and his quotation of Van Nest, "If you eat my liver, I'll eat your liver," also convinced him that Freeman was not in his right mind.

Van Buren felt that Worden was a man of enough erudition to contend with on a philosophic and historical level, and he tried a tangent of equating Freeman's indifference to pain with the indifference to injury felt by brave or desperate men. . . . How did the lawyer know that Freeman didn't feel pain?

Freeman had indicated none, Worden answered. Weren't some men more insensible to pain than others? the Attorney General asked. There was a difference, Worden acknowledged, but he presumed most men would manifest some sensation when such a wound was being dressed.

The Attorney General persisted. Didn't Worden know that some men would endure pain with great composure, when others couldn't? He did know that, the lawyer replied; there was a great difference in people in this respect.

"Have you ever heard of people being burned at the stake?"

"History furnishes many instances of that kind."

"Was John Rogers executed in that way?" (Rogers was an

English Protestant martyr burned at the stake in 1555, during Queen Mary's reign.)

"He was, if the accounts of his death be true."

"Was he a sane man?"

"I suppose he was."

"Do you believe Commodore Lawrence was insane?" (Lawrence led a naval engagement in the War of 1812. It was a hopeless battle, waged with a poor crew and a poor ship, yet he had valiantly or wildly cried out, "Don't give up the ship!"—an expression thereafter to become historic.)

"He was sane, no doubt," Worden opined.

"Can you say whether brave men are less sensible to pain than cowards?"

"I can't say, yet they may be, for anything I know to the contrary."

"Don't men become indifferent to small wounds, who expose their lives in deeds of daring?"

"It's possible that such men may care less about them than some other men."

"Well then, don't you think Freeman may not be more insensible to pain than other men—and yet be sane?"

"I think he felt no sensation at all."

Worden, who had handled many witnesses in his own time, had apparently learned how to conduct himself on the stand.

Van Buren let him go.

Dr. Lansingh Briggs: Ten years before all this, William Freeman had occasionally come to the office of Dr. Lansingh Briggs on some errand for the De Puy family. The doctor then considered him a lad of ordinary intelligence "for boys of his condition," by which he meant Freeman's caste status. He had given the boy directions for the taking of the medicine, and the youngster had carried this information properly back to those who he lived with. He did errands correctly, he made no mistakes, the doctor said.

The physician told Seward that Freeman was now a different person than he was then. Dr. Briggs had been in the jail cell with Dr. Fosgate, Warren Worden and others, and there had been an incident that, at first, made him think Freeman was sane.

In one of the cells near Freeman a phrenologist was awaiting trial. He was accused of examining the wrong bumps on one of his female patients. This phrenologist made some humorous remarks about the shape of the head of the lawyer Worden, and everybody laughed—including, apparently, Bill Freeman. The effect of Freeman's laughter at that moment was to make his visitors feel that the prisoner understood the remarks of the phrenologist.

Dr. Briggs and the others questioned Freeman. From him came "low, subdued and imperfect" answers; there was the insensibility to pain, the constant smiling, and his pulse varied remarkably, ranging from ninety-four to one hundred and fourteen; and at the end of his hour's testing, Briggs reached the conclusion Freeman's mind was diseased.

Van Buren, always looking to draw out variance and contradiction in medical knowledge so as to discredit such testimony, asked, "How would you describe dementia?"

Dr. Briggs: "The symptoms of dementia are loss of power of associating ideas—loss of memory—impairment of moral and intellectual powers—a weakening of perception and comparison—and a general loss of the powers of the mind. The physical symptoms which indicate such a state of mind are a downcast look—aversion to exertion—indolence—loss of intelligence in the expression of the eye—and, in the extreme stages of it, drooling at the mouth."

The Attorney General asked particularly about Freeman's faculties, his attention, his memory, his accuracy, and then he worked toward specific features of Freeman's deed: "What inference do you draw from his taking the horse?"

"I think that perhaps the taking of the horse was to repay himself for the debt due him."

"What debt?"

"For his imprisonment. I do not doubt that he honestly thought there was a debt due him, and that he was entitled to his pay."

"But how can you infer that he honestly thought that he was entitled to that horse?"

"From his conduct and assertions I think he thought that he had been imprisoned wrongfully, and that he had a right to compensation. This was his delusion."

"Do you think the stealing of the horse to go away with is itself any evidence of insanity?"

"I do not. I suppose he knew what the penalty was, and intended to escape, but I think nevertheless that he was acting under a delusion."

"What particular delusion in this instance?"

"The delusion that he must and ought to have his pay."

The Attorney General reverted to Freeman's insensibility to pain. Why did this show insanity? And what was the definition of dementia? And how did he define idiocy?

"Idiocy comes from *idiotia;* and indicates a want of mind from birth."

In the popular mind, and even in the medical community, the term "dementia" was then an over-all generality to describe advanced insanity. The term covered what would be known now as psychosis. It was long before the appearance of present classifications of mental disorder such as "manic-depressive," "schizophrenia" and "paranoia." The term "dementia" was due to undergo a relegation to certain specific categories and types of mental decay, primarily dementia praecox. So there was confusion in medical circles, or uncertainty of definition over such conditions as dementia and idiocy.

"What class do his delusions belong to?"

"Delusions such as his more properly belong to mania; and I think that viewing the delusion and the partial dementia, he labors under a complication of mental diseases."

But didn't Freeman's power of memory, which all said was good, conflict with the idea of dementia?

No, said the doctor.

The Attorney General had to break down the defense reliance on Freeman's smile as a symptom of insanity. He asked the doctor: Was he sure that Freeman hadn't laughed at the amusing remarks of the phrenologist?

The doctor answered that so he had thought at first, but afterward, when Freeman related the particulars of the murder—in the most shocking part of his story, he would laugh.

"One more question, Doctor: Do you infer that he thought he would not be hung for his crime?"

"I have no doubt that he knew the penalty, but thought it should

not be enforced. I am of the opinion that he thought they would hang him, but didn't think it right to do so."

John R. Hopkins: Seward brought to the stand John Hopkins, a local manufacturer and religionist. He was an employer, active in the civic life of Auburn; he had been a frequent caller at Freeman's cell during the witness-making, and he had reported to Seward regularly about his progress with the prisoner. The lawyer believed that Hopkins had an excellent understanding of how a delusion had taken possession of Freeman's mind, and since he wanted to prove that Freeman had finally acted upon his delusion, he asked this witness to describe the chats in the cell.

Hopkins had visited Freeman once, accompanied by the Sunday school teacher of Auburn Prison, Horace Hotchkiss. The teacher remembered that he had had Freeman briefly in his class about a year before. Together Hopkins and the religious instructor talked with the prisoner about God. But, said the witness, Freeman was at first slow to show any interest. Then Hopkins asked Freeman if he remembered being in the Sabbath class in prison. He did remember, the court was told, and when they asked him what he had learned, he answered, "The good."

Had he learned about God? Yes.

About heaven? Yes.

But Freeman was very vague in his ideas of God; he seemed puzzled; he mumbled something which they couldn't understand, and he shook his head. They had gathered from him that God was above, but he was vague again about the idea of heaven.

It was when they talked of Christ that Freeman seemed certain of himself, and the "analysis" yielded results. He said that Christ came to Sunday school once. Hopkins asked what Christ had done there, and Freeman answered he didn't know. Had Christ taken a class? He said he didn't know. Had He preached or talked? Freeman again answered, "Don't know."

Hopkins continued, "I then turned his attention to the idea of pay. I asked him if he got his pay for the time he was in prison. That roused him up and he looked comparatively intelligent. His whole countenance brightened. He said, 'No.' I asked who ought to pay him. He said, 'All of 'em.' I asked whether I ought to pay

him. He looked up at me with a flash of intelligence in his face—looked intently, conveying an answer by the look, and said nothing. I asked if this man [and he had pointed to Hotchkiss] ought to pay him. Freeman looked at Hotchkiss as at me and he said, 'Do what's right,' or 'Well, do what's right.'

"On some subjects," Hopkins went on, concluding the direct examination, "Freeman has a little knowledge of right and wrong. He is insane on the subject of pay. That idea is the controlling influence of his mind. On no other subject is he awakened at all."

Van Buren asked Hopkins why he was so certain Freeman was insane.

The villager answered, "From what I have heard and seen, I concluded that he was insane on the subject of his pay, ever since he came out of prison."

"You have no doubt of that?"

"I don't claim to be infallible, but I have the utmost confidence in this opinion."

"Were you called as a juror in this case?"

"I was."

"When called as a juror, did you swear on that stand—where you are sitting now—that you had formed no opinion as to his sanity or insanity at the time he committed the offense?"

"I cannot answer without telling the circumstances."

"Did you swear that you had formed no opinion as to whether he was sane or not, when he committed the offense?"

"My answer is, I cannot tell—I am unable to tell."

The Attorney General had him squirming: for here was Hopkins ebulliently putting forth opinions even though he had told this same court only a few days before that he could look at the case impartially.

Q. Did you not expect to testify on this trial?

A. I did not.

Q. Did it not occur to you that you probably would be called as a witness?

A. I am not able to state except with some degree of probability, from the fact that this trial was near.

"Did not Governor Seward speak to you about this case?" Van Buren asked.

"He did."

"Did you tell him what you would testify to?"

"I did not. I only conversed with him about the prisoner and peculiarities of the case."

"Several times, have you not?"

"Yes, several. I am unable to say how many; but frequently."

"Have you ever studied Theology?"

"I have turned my attention to it somewhat."

"Did you expect that the prisoner was familiar with that subject?"

"I talked with him about the Supreme Being, as I wanted to learn whether he was accountable and responsible for his crime in the eye of abstract justice and right."

"In law, also, I suppose?"

"I am not sufficiently acquainted with law to tell whether it was any part of my plan to see whether he was legally accountable."

"Did you think Theology was the proper subject upon which to test his knowledge?"

"I conceived that the test I put was as fair as any I could put."

"What did he say about Jesus Christ?"

"He said that Jesus Christ came to Sabbath school."

"You say Freeman brightened up on the subject of pay; is that a rare thing?"

"It is very hard to find people who will brighten up on the subject of pay in the manner and to the degree that he did."

"Did his brightening satisfy you he was insane?"

"I think he was deranged on the subject of his pay, that he was under the delusion he was entitled to pay."

"Do you know that this is common with convicts?"

"Very many of the prisoners say they are entitled to pay, but do not think they are legally entitled to it."

"How do you know that?"

"From their talking about it voluntarily, and in the manner that some do."

"Didn't Freeman talk about it voluntarily?"

"No, I inquired about it."

"Would the volunteering prove that there was delusion?"

"No, not that alone. Freeman indicated a mania on the subject, in his whole appearance and manner."

Horace Hotchkiss: On the "iron couch," alone with Freeman several weeks before the trial:

"Bill, what's going to become of you if they find you guilty and execute you?"

"Don't know."

"Bill, is there any such place as heaven?"

"Yes."

"What kind of a place is it?"

"A . . . ah . . . a . . ."

"Do you believe you'll go to heaven?"

"Believe so."

"Why?"

"Because I'm good."

"Who owes you, Bill?"

"Everybody."

——"Your witness, Mr. Van Buren."

Mrs. Sally Freeman: Most witnesses called by the defense had known Freeman in his childhood, and each had described his manner then as happy, normal, playful. Seward wanted that point emphasized; and he believed that by now it should be clear to the jury. In dementia a change of personality takes place, and this was the primary proof of insanity. He must make the jurors see that before them, on trial, were two prisoners, as it were: one that had been known by his friends and family and employers for a normal childhood personality, and now the one that they all knew, for his transformed nature. Many described his boyhood disposition as a playful one; he sang and he danced and was talkative like others. . . .

But once, late on the second day of the defense's course, an odd hush settled over the court. There had been restiveness among the spectators, and some were leaving, but nobody walked out now. . . . Bill Freeman's mother had taken the stand. There was a squirming among the spectators to see the woman known to be part

Indian. What manner of creature could have projected such a specimen?

She was dark brown, she had high cheekbones and her hair was straight and black. The red ancestry, apparent in her features, was no help to her, for the villagers hated Indians. The redmen were being fought and exterminated in the West, where they were still offering resistance; the blacks and the reds had intermingled, and the present attitude was that both had to be dealt with authoritatively.

All that had been said of Freeman's childhood until now might have been unlighted, but in a few swift strokes his mother told how her boy had been rocketed into the community like some uncultivated windblown weed. . . .

"My husband died seventeen years ago," she told the court. "I took care of my son till he was nine years of age, when he went to live with Captain Warden. After living with the captain awhile, he lived with Mr. Ethan A. Warden several months. After that he lived with Mr. Cadwell two years.

"I put him out to live at those places.

"About six years ago he went to the State Prison. When he was young, and before he went to prison, he was a very smart child. He was always very playful and good-natured. About understanding things, he was the same as any other child. I never knew he was foolish or dumpish before he went to prison. After he came out of prison he didn't act like the same child. He was changed. He was deaf and didn't appear to know anything. I didn't see any cheerfulness about him. When I asked him a question, he would answer, but that was all he would say. He appeared very dull. He never asked me any questions, only if I was well, and that was when he first came out of the prison.

"From that time to this he has never asked me any questions at all.

"He has never offered to say anything to me, except when I asked if he could get work; then he wouldn't say much. Since he has been out I don't think he has been to see me more than six times, but I have met him in the street and spoke to him.

"When he came to see me perhaps he would ask me how I did,

and then sit down and laugh; what he laughed at was more than I could tell.

"He laughed as he does now——see——see——see him laughing"—she pointed—"he laughed like that.

"There was no reason why he should laugh. He was laughing to himself. He didn't speak of anything when he laughed. I didn't think he was hardly right, and he was so deaf I didn't want to——"

Sally Freeman started to weep.

Seward placed his hand on her shoulder. She made a quick, remarkable effort, and she went on . . . to Seward's questions.

"I don't remember anything else that he said or did. He was not deaf before he went to prison. I asked him how he got deaf. He told me his ear had fell down, or some such foolish answer he gave me. When he came to see me he would stay an hour or so. He generally sat still. He would speak to others if they spoke to him. His answers were pretty short.

"I did not see him for about two months previous to the Van Nest murders. I didn't know the Van Nest family. I never heard him speak of them."

Seward asked her whether she had seen her son while he was in jail. She had, she said, on the first of June. She had gone there to ask him how he was. She went, not as a witness-in-the-making, not to query him on theology or society, not as a premature analyst, as the other villagers were questioning him hourly . . . but simply as his mother.

"He laughed when I went in and said he was well. I asked him if he knew what he'd been doing. He stood and laughed. I asked him how he came there. He didn't say much of anything, but stood and laughed. I stayed but a short time—a few minutes. When I asked questions, I got no answer at all. I felt so bad, he looked at me so, I didn't know what he did say. I think he was altered a good deal from what he was before he went to prison. When I went away, he didn't bid me goodby, nor ask me to come again."

Attorney General Van Buren didn't care to tangle with Mrs. Freeman. He was afraid of the mother theme in court. He wanted to know only a few details of her genealogy.

"Have you any other children?"

"I have three children—had five, but none of them are crazy but this one."

"What was your name before marriage?"

"Sally Peters, and I was born in Berkshire, in the State of Massachusetts; some of my ancestors were red people, of the Stockbridge tribe."

Judge Bowen Whiting, staring downward at Sally Freeman, listening to the picture of her son thrust into a hostile world, had a complex thought. Much as he wanted the black man hanged, there was something he'd have to speak of in his charge to the jury. . . .

He dipped a quill in a pot of ink that rested next to his gavel at the edge of his high bench and, just for his own reference later, he scrabbled a few vague half-spelled phrases on a sheet of paper . . . that happened to be preserved. . . .

moral cultivat . . . col'd youth in midst . . . obvious

CHAPTER THIRTY

"All Mankind Were His Enemies"

The test for insane murder moved on, the occurrences most unpredictable, styleless, often deep as the lake with meanings not seen, like the springs that fed at the bottom of Owasco; again rearing with jagged unexpectedness, like the sheer granite cliffs of the village quarry, or convulsed like the shifting walls of the sand dunes along the lake shore; sometimes undulating, like the village hills—but always moving toward one center.

In one village after another throughout the state, wherever there was a Whig newspaper, they watched the trial and editorially disavowed Seward. They had no sympathy, they said, for William Freeman, or for the present action of "the Governor," in defending such a wretch. Whig followers could not and would not go along with such false sympathy. The newspapers cautioned non-Whigs not to confuse conservative Whig principles with the fanatic defense of a murder now being made by the East's leading Whig. He was not helping their cause at all, they said, and he had better come to his senses. If he didn't watch out, he'd weaken the Whig cause in New York State, and create a crisis which might enable the Democrats to move into control in the autumn elections.

Seward was bombarded by letters from Whig associates, advising him to drop that case.

But he went on calling witnesses—somehow certain that he

was defending a broad general principle, that insanity was a disease of the brain, and even if Freeman's disease wasn't known, it was there—because his deeds had shown it.

The citizens, each with their own interest, filed in and out of court: some coming early and staying later, others attending morning or afternoon sessions. They peered over shoulders, they stood on chairs at the rear of the court, they clamored around the doorway so that, if one left, another could be admitted in his place.

Judge Elijah Miller sat faithfully in court, a quiet supporting presence for his son-in-law. He was, each day, among the first to enter court, the last to leave.

Among the regular attendants was a house painter, name unknown, an Auburn man, who came daily and studied the features of William Freeman. When the prisoner once or twice had to stand up, the house painter carefully noted his height, the heftiness of his shoulders, the hue of Freeman's skin, the down look: he took notes and made sketches. He had dabbled in art, and he had actually received a few dollars in cash to do a series of mural-size oils of the Van Nest murders for an impresario named George J. Mastin. Mastin was a kind of regional Barnum, a man with a small traveling show, a demonstrator of phrenology, and an exhibitor of dramatic oils of unknown painters, and he intended to add to his traveling gallery, "Scenes from the Massacre at Fleming."

Dr. Charles Van Epps: Seward now called those witnesses who best knew what had happened to Freeman in his adolescent and prison years, the period when, he would demonstrate, a change had come over the defendant. He began with Dr. Charles Van Epps who said he had known the prisoner "since he was a nursing babe." He had practiced in the family of Freeman's mother, and knew Bill before he could talk. Then he had lost track of him until after his imprisonment in the county lockup. There, with others, Van Epps had probed and tested, taken Freeman's pulse, and tried to get him to count. "He did once count up as far as twenty-eight, but that seemed an accident more than anything else." He had smiled and grunted and answered monosyllabically, and from the earliest this doctor formed the opinion that Bill's intellect was very small;

still, on his first visit, he hadn't decided whether the prisoner was demented.

He went again; the same routine of probing; and this time he decided that from his appearance generally and from all his remarks he was insane.

"I knew the prisoner when he was a nursing babe and until he was three or four years old. I assisted at a post-mortem examination of his father who was killed in an accident. Prisoner's mother used to be an intemperate woman. She lived with me awhile. He then appeared as bright and intelligent as children generally at that age. Now he answers questions with a childlike simplicity, regardless of the consequences, and as if he didn't know them. For instance I asked him day before yesterday whether they had taken him up to the court——"

The Attorney General: "I object to any testimony relating to this prisoner derived from examination since the verdict of the jury on July sixth upon his present sanity. That question has been settled by a verdict——"

The judge sustained the objection. He said that the question now before the court in connection with the murder was whether the prisoner was sane at the time of the commission of the crime. All evidence of insanity must be confined to facts before and at the time of committing the act, and after the murders up to the sixth of July, when the preliminary verdict was reached that Freeman was "sufficiently sane" to be tried.

Seward took exception; then, defying the court decision, he asked the doctor whether the prisoner was insane now.

Van Buren objected again, and once more the court sustained.

Seward tried again: What was Dr. Van Epps' opinion as to whether the prisoner was insane any time before last July sixth . . . and the court let the doctor answer:

"I think he was insane at and before that time. . . . He has an impression that everybody is against him, and that was why he wanted to kill somebody. He had nothing in particular against Van Nest, yet insane people generally kill their best friends sooner than they will their enemies. . . . He thinks he can read, but cannot. He is under a delusion in that; yet he appears to be anxious to show us that he can read."

"Your witness," Seward said to the Attorney General.

Van Buren was a little taken aback at the abrupt answer he got when he asked, "What do you think the cause of the insanity is in this case?"

"*Brutal treatment,*" Van Epps answered explosively.

That was another defense contention that must be opposed, Van Buren knew. He must prove that Freeman was always wicked and violent and that he underwent no change in prison. Seward was trying to establish the prison punishment of the colored man as the probable source of his insanity.

Van Buren sidetracked Van Epps' testimony with a question or two about his medical background:

"Where did you get your diploma and how long have you been practising."

"I got my diploma at New York University and I have been practising since 1825."

"Where were you born?"

"I was born at Kinderhook," and then, without being asked, Van Epps added, "I am a Dutchman—like you, Mr. Van Buren."

"Does not his design, his calculation show sanity?"

"I have known insane men to do acts evincing more than ordinary design."

"If he were feigning, would you have been able to detect it?"

"Had any dissimulation existed, I should have been able to discover it."

"Do you see anything uncommon in his desire for pay?"

"That isn't a common delusion, not the way it existed in him. He thought it right to get pay. . . . I also think he was under the impression that all mankind were his enemies."

Martha Godfrey: Martha Godfrey, the middle-aged widow of Sennett, with graying hair and a somewhat nonplussed manner, told Seward what she knew about the theft of a horse from her barn six years before.

She had been a witness against the colored man in this very courtroom at that time, and in honesty or error, she had been the means, in part, of his going to State Prison.

That had changed his life, the defense asserted, set off all the

subsequent events, including the killings. She told the court that there had been two other witnesses against Freeman, one was white and the other colored. The colored man, Jack Willard, who went under the alias of Jack Furman, was the principal witness against William Freeman. At the age of sixteen, Bill had gone to State Prison and she had not seen him again until this past winter, after his release.

Then, during the Wyatt trial he came to her door and asked if this was the place where a woman had had a horse stolen five years before.

"It is," she had answered.

"I been to State Prison for stealing it, but didn't do it."

"That's something I don't know anything about."

"Can't hear you."

"I say I don't know nothing about that."

A neighbor, Joseph Johnson, entered the Godfrey house, and he asked Freeman what he wanted. Freeman just sat at the kitchen table awhile.

"Would you like something to eat? Like some cake?"

He ate the cake.

Johnson spoke to him again, and asked him if he wanted the horse.

Freeman looked around. He smiled. "Don't want the horse now. Want a settlement. Pay for the time I done in prison." Three complete sentences. One of the longest utterances anyone had heard from him since before prison.

Seward asked Mrs. Godfrey if she knew any of the Van Nests, and whether they were in any way connected with the trial over the stolen horse.

"I never heard that any of them were concerned in the trial in any way. I didn't know any of them. They were in no way related to me or to my family. I never heard of them until after the murders were committed."

"Your witness, Mr. Van Buren."

She had as much right as anyone to an opinion about Freeman's sanity, and the Attorney General asked her whether she thought he acted insane on the day he visited her.

"I didn't think of his being crazy then."

"What do you think about him now?"

Van Buren looked at Freeman, and Mrs. Godfrey also looked at the prisoner.

"I see him now in court . . . he looks different from some colored men. Now he smiles and looks silly."

Van Buren quickly let her go.

Aretus A. Sabin:

Seward: You saw the accused in Auburn Prison?

Sabin: I have known this prisoner fifteen years, before and during prison. I saw him in the hame shop in the prison.

Seward: Did you see him when he first arrived at Auburn Prison?

Sabin: I saw him in prison before his striped dress was put on him. He was still a boy, just sixteen.

Seward: Did you talk to him?

Sabin: I then told him I was sorry to see him come in so young.

Seward: What did he do?

Sabin: He wept.

Seward: He wept?

Sabin: He wept.

Seward: Are you sure he wept?

Sabin: He wept.

In this way Seward was unfolding the pattern of Freeman's life, leading to the decisive two-year period during his imprisonment.

James Tyler: The keeper in the prison hame shop, looking at Seward, told how he beat Freeman over the head with a board. He was candid and full in his storytelling, unashamed and without apology. He was, after all, a prison guard and he had to get work out of the men, and Freeman wasn't working as he ought to, Tyler said. He talked to him many times, but Freeman malingered.

"When I talked with him about doing more work, he gave as an excuse that he was there wrongfully and ought not to work. I at last called him up, and told him I had done talking to him; that I was going to punish him. I turned to get the cat (cat-o'-nine-

tails, we call it) and received a blow on the back part of my head from him. He struck me with his fist. I made another step, and as I looked around he gave me another blow upon the back. I then hit him with my foot and knocked him partly over; perhaps he fell. I think he did fall over.

"He jumped up, went across the shop and got a knife, with which he came at me. I then had to defend myself, and also take some means to cause him to submit. I picked up a basswood board about two feet long, fourteen inches wide and a half-inch thick, and struck him on the forehead. It split the board and one piece of it fell on the floor, and the other, a piece about four inches wide, remained in my right hand. Other convicts then came up to him, but I told them to let him alone—that I would attend to him.

"I then gave him eight or ten blows with the remainder, and told him to set down. I knocked the knife from his hand with a piece of board, and it fell on the floor. I then flogged him ten or a dozen blows and sent him to work. He never gave me any trouble after that, although he never did a full day's work."

Seward asked about the cat-o'-nine-tails, the same bludgeon that had helped drive Henry Wyatt to insanity and murder.

Tyler described it: "The instrument which I call a cat is made and used for flogging men. The stock is made of rawhide, and is about two feet long; the lashes are of about the same length and have many strands."

Van Buren cross-questioned, trying to break down the implication in Tyler's story as drawn out by the ex-Governor. Did Tyler think that the blow with the board could have deafened the prisoner?

"No. He was very hard of hearing all the time he was in my shop."

When the murders occurred, Tyler recalled that he knew Freeman, and in a gesture of recollection he had even placed his hand to the back of his head where Freeman had struck him; he remembered how he hit the prisoner with the board. Then, during the weeks of the witness-manufacture, Tyler joined the column of villagers filing in and out of jail.

Van Buren: Have you seen him since he was arrested for murder?

Tyler: Once, in jail.

Van Buren: Did he look any different to you than he did in prison?

Tyler: I saw no difference. He is deaf, and when I asked him if he knew me, he asked me to speak louder.

Van Buren: Were his answers pertinent and appropriate?

Seward objected on grounds Tyler had no medical qualifications whatever to judge whether Freeman had answered pertinently or appropriately.

Van Buren: Did you see anything about the prisoner indicating insanity?

That question was considered by the court and both sides legitimate, and the guard answered, "I did not. I never thought about it."

Benjamin Van Keuren, foreman in the hame shop while Freeman was there, said that the prisoner's job was to file iron for plating. Freeman was a middling kind of workman, he told Seward; not the best, not the worst, and the filing required some judgment and some practice.

Van Keuren told how he had helped get a flogging for Freeman. The prisoner had been saucy to him, Van Keuren said, so he reported the inmate to Captain Tyler. "You must be a fool to suppose a man can do as much with a dull file as a sharp one," Freeman had said. A prisoner had no right to call a guard a fool, so Bill was "taken to the wing and punished by showering."

After that Bill grated his teeth at Van Keuren.

He saw Tyler split the board over Freeman's head, and he didn't believe the prisoner had gotten any deafer because of that. "The blow on the head was a middling kind of rap," the foreman said. In his opinion the colored man had been hard of hearing before.

Van Buren asked Van Keuren whether the blow by the board could have hurt Freeman and the foreman of the hame shop answered, "I shouldn't think such a blow injured him. The board was only about two feet long, twelve or fourteen inches wide, and from a half to three quarters of an inch thick."

Seward re-examined the jailer.

Q. Would not such a blow as was struck by Tyler injure an ordinary person, in your opinion?

A. I should think not.

Q. Would not such a blow upon your head, with a board two feet long, injure you?

A. A board over my head, only two feet long, would only raise the grit a little.

Q. Would it not cause pain in the head?

A. I don't think it would knock my brains out, nor kill me.

Q. Did you ever receive such a blow?

A. I don't know as I ever was struck over the head with a board of that description; but I think it would not hurt me at all.

Q. If the blow did not cause his deafness, do you know what did?

A. I don't. He was deaf when I first became acquainted with him.

Q. Were you not one of the persons present near the house of John G. Van Nest, deceased, when the vote was taken to hang the prisoner?

A. I think very likely I said he ought to be lynched.

Seward pointed at Freeman and said, "Look at the prisoner."

Van Keuren looked. Seward said, "What do you think about that smile?"

Van Keuren: "He laughs now just as he used to in prison. I think now that he looks intelligent, but I think he looks ashamed. That expression which you call a smile, I call a scowl."

Seward: Have you seen him since the murders?

Van Keuren: In jail. I asked him how he did. I didn't think he was crazy then, and not now.

Seward: You see no difference between him now and when you knew him in prison?

Van Keuren: I see no difference. He smiled in prison. His smile is familiar to me. I always thought he saw something that pleased him, which I couldn't see.

Perhaps Van Keuren told the truth. Maybe not. Maybe he spoke from self-interest, as a guard who must protect the prison interest. Perhaps he spoke from blindness or prejudice, or from

his back pocket, or from some honest ignorance. He may really have been sincere in saying that he thought Freeman, smiling, saw something that pleased him, which nobody else could see.

But Seward could see, clearly . . . that some time in this two-year period, the first two years of Freeman's imprisonment, when he had to contend with guards like Tyler and Van Keuren, and after the flogging from Tyler, the idea had come into the injured brain that he was entitled to pay for the time he was spending in jail.

Perhaps he heard other inmates discussing the inadequacy of their daily wage—a penny or two a day—in return for their labor. He may have heard them speak of the small help it was, on the day of discharge, to leave prison with only two dollars or so as payment for years of labor. The prisoners talked of how the manufacturers in Auburn profited from their cheap labor. These possibilities may have mingled with Freeman's developing idea of revenge, or retaliation, or remuneration for false imprisonment. Except in his case, he placed some much higher estimate, hard to compute in dollars and cents, for what had been done to him. In fact he was willing to compute in terms of flesh and blood and human lives, if need be, if no cash payment was made to him.

All of his life, money—small sums of money—had meant food or hunger to him. The few cents earned for cleaning silver, the "two bits" for sawing wood, the three pennies for doing an errand across the village.

There was cash value on human gain and suffering, and within, he began a bartering over it: cash or lives.

CHAPTER THIRTY-ONE

"Thinks I to Myself . . ."

Van Buren was irritated with Village President Ethan Warden.

Warden was a strong man for Seward to have in his camp, and he was obdurate in his belief that Freeman was insane. Besides, he knew more about Freeman than most white men in the village. Once Freeman had lived in Warden's home, and he had worked there, running errands, and then he had run away and had never come back.

The Village President had lobbied among Whigs and religionists to involve them in the case on the side of Seward's defense. He admitted this deep interest. He said that as Village President he had the job of doing whatever he could to prevent a lynching and to see that Freeman got a fair trial. Both these matters had been in doubt, and might be now, he said.

Van Buren didn't like those imputations.

In the preliminary trial Warden had told the court that he had seen Freeman in the State Prison. At the time he noticed a great change in the prisoner's appearance from what it had been years before when he was a boy working about the Warden home. In describing the effect of this on his mind, he had told the jurors in the prior trial, "Thinks I to myself, what has come over Bill?"

Now the expression "thinks I to myself" was local to Central New York then—and it is occasionally used now. It may have come from England. But it was unfamiliar to the erudite Attorney General, and he viewed this idiomatic expression, with its redun-

dancy, as some sign of lack of culture on the part of the Village President, and he pressed every advantage. If he could show the town head to be an unlettered man, or uncouth, that would curtail the effect of his testimony.

Van Buren, therefore, tried to get Warden to repeat the expression to the present jury, and he asked of the witness: "Did you say to yourself when you saw him, what has come over Bill?"

Seward detected the move at once and he half-arose from his seat at the defense table. "Object!"

"Sustained," said Judge Whiting, who knew the point involved.

"Exception!" said Van Buren.

He tried another question intended to get Warden still to utter the colloquial expression. "Did you mention that to your family?"

"Object!"

"Sustained!"

"Exception!"

Van Buren meant to try again; perhaps he was looking to lighten the tragic case, perhaps he was amused, perhaps cruel. He put it bluntly this time, in all of its redundancy:

"Did you then *think to yourself* that something strange had come over him?"

"Object!" Seward remained standing now.

"Sustained."

"Exception!"

Van Buren decided to give up, and he asked, "Had a change come over him when you saw him in the State Prison?"

Warden said that Freeman appeared changed, different from when he had known him years earlier; not as sprightly, or as bright; but was more stupid.

The Village President upset the Attorney General when he reported that District Attorney Luman Sherwood had passed the remark to him, "There's more reason for this defense than in the Wyatt trial."

Van Buren saw the opportunity of pursuing again the idea of a plot of "a certain set of men," including the Village President, to interpose the false theory of insane murder.

Van Buren asked the village head if he hadn't actually sat

down with the defense counsel and figured out policy in connection with this case.

"I have conversed with them several times about this case," he admitted.

"Mr. Warden, did you not see something from which a jury could infer that he was in his right mind; for instance, the concealing of the knives?"

"I thought nothing of that. To me, one circumstance would not make much difference."

"Do you think the circumstance of his concealing his knives indicated insanity?"

"It might indicate sanity, and it might indicate insanity, in this case. The reason is——"

"I don't want to know the reason," Van Buren said, and he waved Warden and the answer aside.

"*I want to tell the reason,*" Warden insisted.

Judge Bowen rapped and interrupted. "The witness has no right to give the reason."

Seward intercepted the judge. "The witness is asked whether a certain fact indicates sanity. The witness says it might not in this case, and wishes to say why. I insist, as well on behalf of the witness, as the prisoner, that he be permitted to give the reason for his answer."

"Request denied," Judge Whiting said.

"Exception," Seward said, and the court clerk noted the exchange.

Warden again defended his interest in the case. He told the Attorney General that, at the time when Freeman was near to being lynched, he had heard remarks from one of the members of this court that he did not think becoming in a judge, and altogether there was reason why he, certainly, as the leading executive of the village, should take an interest in fair play.

"What are your views in respect to capital punishment?"

"That the law should be changed."

"You are opposed?"

"I am. I don't think it right for one man to take the life of another."

In America in the 1840s, when the country was still growing, all moral issues were still under debate and each state could decide most such matters for itself. The debate on capital punishment was alive and politically important at that moment in New York State.

"Do you think the law ought to be defeated?"

"I cannot say that I think it ought to be defeated; our laws in general ought to be executed, yet I think the law in respect to taking life is wrong."

The Attorney General nailed hard: *"Do you know that your opposition to capital punishment is the cause of the interest you feel in relation to the fate of this prisoner?"*

"I do not know any such thing, for no such fact exists!"

Deborah de Puy: Seward, hammering on the theme of a prisoner who had a normal childhood—normal at least for the color-caste condition locally—called Deborah De Puy, a twenty-four-year-old colored woman. She was "living with" Hiram De Puy, the brother of John De Puy, who married Bill's sister. She had been to dances and on rides with young William; she had known him as a cheerful boy; and then, after his imprisonment, there was this great change in him, his hearing gone, and he'd told her he was struck on the head with a board, and "the sound went down his throat." She hadn't seen Freeman in his cell, but Seward believed she could confirm the change in the prisoner.

The Attorney General strolled across the dock. He had adopted an air and a mood: he'd have an easier time with this witness than he'd had with Dr. Briggs and Warden and Hopkins. He'd give the folks a laugh—with what he knew about her. Van Buren, the man of manners, groomed, cultured, stood close to her, and it was a clash of two worlds.

Where did she live? She answered that she lived below the Female Seminary in the west end of the town, but she didn't know the name of the street.

"Is your memory good?"

"My memory is good."

"What is that husband's name, that you speak of?"

"Well, his name is Hiram De Puy."

"Does he live upon that street which you find it difficult to name?"

"He lives where I do, of course."

"Then you live together."

"I don't know whether it's anybody's business whether we do or not."

Negroes at that time, not long emancipated in this state and unaccustomed to legalized marriage, were sometimes slow to avail themselves of the right.

"Perhaps not; but I suppose you can have no objection to telling me how that is."

"But how do you know I ain't?"

"Well, Deborah," said Van Buren, smiling, and glancing at the spectators, giving them a cue to laugh, "I thought that you would oblige me as much as to answer that."

"Yes, we do, but I can't answer any more questions."

"Never mind, Deborah, we've got along with that, and will turn to a more agreeable subject. Do you recollect when you were married?"

"Do you s'pose I'm going to answer such questions!"

"Yes, I rather supposed you would like to tell me about that."

"S'pose I couldn't tell?"

"Suppose you should try."

"Well, s'pose I shouldn't."

"*I think you had better tell me that, Deborah!*"

"I shan't answer such foolish questions!"

"*Will you tell me where you were married?*"

"*If you come down to my house, I'll tell you all about it, but I won't here!*"

"It may be inconvenient for me to come, Deborah, and therefore I shall have to insist upon your answering me now."

"Well, I shall not."

Judge Bowen had enjoyed this and he said, "The witness must answer."

Van Buren picked up from that. "The court thinks you ought to answer. Be kind enough to inform me."

"I couldn't tell you where I was married."

"Did you have a large wedding party on the occasion?"

Uproarious laughter from the spectators' benches. Deborah Du Puy wore an agonized and uncomprehending look.

". . . I couldn't tell how large the wedding was."

"Didn't you know something about it?" Van Buren was wreathed in smiles, and his eyes twinkled with delight.

"Of course I did."

"Didn't you have more of the wedding than anybody else?"

"Of course I did but I can't tell."

"Can you tell who performed the marriage ceremony?"

"I couldn't."

Van Buren knew he had scored. The jurymen and the spectators liked to tell jokes about the social morality of the colored, and he had let them witness the unfolding of a whole joke.

CHAPTER THIRTY-TWO

Van Buren Will Get Seward's Liver

John Van Buren intended to prove that the test of insanity was Seward's idea, Seward's and "a set of men" about him, as Police Chief Munroe had put it. This idea already had wide prevalence in the community. Van Buren would encourage this idea as far as he could. He was out to prove that—not Freeman, *but Seward was the real impulse behind the murders.* As one who irresponsibly conceived the idea of test cases of insane murder to plague this village, he must be held accountable. If he could convince the jurors that the chief defender himself was a principal culprit in this case, or *the real culprit,* the defense would be greatly weakened, and a conviction of Freeman even more likely.

Beyond this tactic there was a deep-seated personal rivalry between Van Buren, the Democrat, and Seward, the Whig. The Whigs had campaigned bitterly against the Attorney General's father, President Martin Van Buren, when the President ran for re-election in 1840; and Van Buren, the eighth President of the United States, had been defeated by the Whig candidate, William Henry Harrison of Ohio. Seward, then Governor of New York State, had been a potent factor in the election of Harrison and the defeat of Van Buren.

Moreover young John Van Buren had a family tradition to maintain and somehow it could all be at stake in this trial. His father had been appointed Attorney General of New York State in 1812. Now, thirty-four years later, the son held the same post;

and John Van Buren felt the size of the challenge and the obligation to keep high his, and his father's, name, to hold the Democrat banner aloft as the true defender of the people against nightmarish ideas like those of the Whig, Seward, and at the same time, make secure his own position.

There was, therefore, a deadly seriousness between these two New York State leaders, the Whig fighting for a principle and for his political and professional life—and the Democrat charging, not very subtly, that the ex-Governor was the responsible figure in a terrible tragedy, perhaps even the mainspring of the massacre.

Van Buren had been moving on this tack, from one witness to another, tracing the extent of direct connection between the witnesses and Seward. Now, with two of the defense's important witnesses, a religious businessman, Ira Curtis, and the Reverend John Austin, the Attorney General broadened his picture of this plot.

Curtis, under direct examination, told Seward that he was fifty-two, that he had been in the restaurant business for many years, and a few years earlier he had employed Freeman, and the prisoner had lived with him at the time. He wasn't a very good worker, he did almost everything wrong, Curtis said, and he regarded the employee even in his adolescent years as "more a knave than a fool."

The tavern keeper, one of the army of interrogators while Freeman was in the county lockup, described his conversation with the prisoner at the jailhouse. Was he after the Van Nests' money, he had asked, and Freeman said he didn't know they had any. How had he come to kill that child? Freeman had answered, "They say, I know, I killed a child; but Mr. Curtis, no, I didn't; I never killed a child." Well, then, what did he kill the others for? The young colored man had answered, in a drawling way, "Why . . . Mr. Curtis . . . you know I had my work to do."

"Enough of that nonsense!" Curtis had sharply replied to him. "Now don't talk so foolishly; say what you had against Van Nest!"

But Freeman had replied he hadn't anything against Van Nest and didn't even know him, but he had his work to do, and it had to be begun.

"What I saw of him gave me the impression that he was crazy, or was a fool, or both."

Van Buren cross-examined:

"Did you ever punish him?"

"I never punished anybody that I hired; never punished or reproved him when he was in my employ."

"Did you teach him to read?"

"He did not learn to read while he lived with me."

"Did he attend any church or school at all?"

"I doubt whether he attended any church or any school."

"How did you happen to visit Freeman in jail and interest yourself in this case?"

"I was told I would probably be called as a witness in this case, as I had known Freeman before he went to State Prison, and I determined then to go and see him. I arranged to go with the Reverend J. M. Austin, who is the clergyman of the church I attend."

"What was your object in seeing him?"

"My object in going to the jail was to see him, having almost forgotten him. After seeing him I talked about him, and when I heard men say that he ought to be hung, I would say, 'You might as well hang a dog.' I didn't know I was to be called as a witness as to his state of mind."

"Did you go to Mr. Seward after you saw Freeman in jail?"

"I afterwards told Mr. Seward of my interview with the prisoner."

"Was your mind made up as to Freeman's insanity before you went to see him?"

"No, it was not. But it was neighborhood talk when he was in State Prison that he was called crazy. He was called Crazy Bill. I had heard that some called him crazy before I went to the jail; some said he was a fool. When he tried to read, he used a great many strange words. He commenced reading by repeating the words, 'O Lord, Jesus Christ, Almighty, mercy Moses,' and continued in the same way, but sometimes using words that I could not understand and which I doubt were to be found in any language; certainly not in the English."

Van Buren asked, "Did it ever occur to you that he was trying to impose on you to get up the plea of insanity?"

"It did occur to me."

"Was it not possible that with his appearance he was attempting to play off such a game?"

"The thought vanished in a moment. There was too much before me."

"Did not the prisoner appear to be in a reflective mood?"

"I had an impression that he did not think much, anyway."

"Might you not have been deceived by the prisoner's sincerity?"

"I supposed the prisoner was telling me the truth."

"Did you think he appeared differently from what he did when he lived with you?"

"I got the impression that he was not a tenth part as big a fool when he worked for me as when I saw him in jail."

"Then you consider him a bigger fool than formerly?"

"You have asked if I found any change in him. That impression grew stronger the more I saw of him."

"Are you acquainted with the subject of insanity?"

"I don't know anything about it scientifically. I have seen many cases of it."

"Did you know he could not read before you gave him the testament?"

"No. I did not know, only from what he said. He said he could and I got the opinion that he was honest in thinking so. When he said, 'They tell me I killed the child, but, Mr. Curtis, I certainly did not,' I thought he was telling me what he believed to be the truth."

"And you think he believed that to be the truth?"

"I think just at that moment he thought he had not killed the child; but I think it likely that he would five minutes after have told another person a different story."

"Were the words he pretended to read on the page opened to him?"

"They were not."

"Did it occur to you that he might have been taught to do this?"

"No. I don't believe it is in the power of all in this room to teach him to carry on a piece of deception for fifteen minutes."

Van Buren let the witness go.

It was the succeeding witness, the Reverend John Austin, he was especially interested in.

The Universalist minister, who had been the first to visit Freeman after the murders, mainly to inquire whether the prisoner had attended the Wyatt trial, testified directly that he had made a half-dozen visits altogether. He had found Freeman variously coherent and incoherent, depending upon what he was questioned about.

The clergyman had explored Freeman's childhood and growth and his prison years, like many of the others, but the prisoner yielded up one thought, over and over, that he had been wrongfully imprisoned, he felt entitled to pay—and he had got his pay—in his own manner!

When the minister first visited Freeman, it was in his clerical capacity, with no reference to any trial that might arise; he simply wanted to be of some use, he told the court. He had experimented with the man's reading capacities, his odd conceptions of the Lord, his inability to count beyond twenty-eight, and he asked Freeman why he had gone and killed on the particular night he had chosen? "The time had come," Freeman answered.

Freeman told the clergyman of his mistreatment in prison, how his deafness had resulted, and the stones of his ears dropped down into his throat. That sounded strange, and then when the Universalist heard Freeman quote Van Nest as saying he would eat Freeman's liver if Freeman ate his liver, he decided the prisoner was insane: for Van Nest would never have had the time to make any such statement, so furious and swift must have been the assault.

Once the prisoner had shown to the minister a complete lack of appreciation of the nature and enormity of his deeds, an entire ignorance of the consequences of his act, saying, "If they let me go this time, I'll try to do better."

The prosecution had contended that Freeman was feigning insanity and that he did so now as he sat in court, wearing a false

smile, but the minister, in answer to a question by Seward, said, "I have not the slightest doubt that there was no attempt to dissemble. He did not feign deafness. He is very deaf, beyond doubt."

"Your witness," said Seward.

Van Buren walked across the dock to the witness box, he stood close to the clergyman, their faces only a few inches apart, and a debate opened.

Van Buren: Have you not, Reverend Austin, been active in aiding counsel to prepare a defense?

Answer: I have taken about the same interest, probably, that many others have.

The Attorney General was insistent: *Have you not been in frequent consultation with his counsel as to the manner of getting up a defense?*

Answer: I think at first I asked Mr. Seward if the prisoner would be defended, and I think he replied, that he would.

"Did you conceive it to be your duty to employ counsel for the prisoner?" Van Buren probed.

"I needn't answer that, as Governor Seward had previously stated to me he would endeavor to defend him. I employed no counsel."

"Why did you feel such a deep interest for one who had slain a whole family without provocation?"

"If he had been sane and in prison, it would have been my duty to have visited him, although guilty."

Van Buren lifted his index finger and held it close to the minister's face. "*Did you ever go to a jail and ask prisoners if they wanted counsel?*"

"I recollect of no other case where I ever asked that question."

"How did you come to ask the prisoner that question?"

"Governor Seward suggested that I should ask him if he wanted counsel."

"Have you not suggested to Freeman the propriety of his making a defense?"

"I think I inquired of Freeman if he had any lawyer engaged, and he answered, No. I then inquired of him if he would like to have Governor Seward defend him, but he did not seem to under-

stand what I meant. After repeating it several times, and using different phrases, he seemed to comprehend, and answered, Yes. I subsequently stated to Governor Seward what he said."

"Have you not been about town looking up witnesses?"

"I have inquired what persons knew about Freeman. Have conversed with several persons, but have never been about particularly for that purpose."

The cross-examination popped. Van Buren asked, "Have you preached on the subject?"

"I don't know that I have."

"*Have you not preached on the subject, generally?*"

"Never particularly; never made it a theme of discourse."

"Have you not preached on moral insanity within six months?"

"I have not, except to advert to it incidentally, perhaps, in a discourse."

"Have you not preached on the subject of capital punishment, lately?"

"Not to make that a subject; but I may have alluded to it; probably I may have done so. I am opposed to capital punishment, think it a relic of barbarism. Crime should be punished, but not in that way."

"Have you written, in relation to the murders, for the press?"

"I have. I wrote an article for a religious paper in Utica, some six or eight weeks since. Some copies of that paper are taken here."

"Did you not denounce the community in respect to this prisoner and charge the community with the crimes of this man?"

"I did not charge them. I said they were to a certain extent responsible for the crimes committed in their midst, and I think they are in some degree."

"Is this murder the legitimate consequence of the neglect of the colored people in this place?"

"It is my opinion that neglect is one of the causes that led to it."

"What signature did you append to the article published in the *Advertiser?*"

"*Justice.*"

"In this article did you not state expressly that this neglect was the legitimate cause of this crime?"

"I might have inquired whether or not it was."

"How many times have you mentioned this case?"

"I have talked about it one hundred times!"

"At all times alike?"

"Substantially so."

The Attorney General paused to catch a breath, took up again:

"Which subject did Freeman talk about most readily?"

"His pay and his wrongful imprisonment."

"What was it that the prisoner told you about the liver?"

"He said that Van Nest said, or that he thought he said, 'If you eat my liver, I'll eat your liver.' "

"Do you not know that it was an Indian ceremony?"

"I do not."

"Why cannot you as well conceive that Van Nest said so?"

"I cannot. And the reason is that Freeman is more likely to be mistaken than that Van Nest made the remark. Again, a deaf man may easily misunderstand."

"If it were a common expression of the prisoner, would his remark, in your judgment, be evidence of insanity?"

"It would lessen the force of the impression."

"Might the prisoner not have lied to you?"

"I should not consider lying any evidence going to prove sanity or insanity; but I have no idea that he did lie."

Van Buren skated on the fine ice of motive. He must destroy the idea that the lack of motive for the massacre was a proof of insanity.

"Suppose he had a motive for lying to you, would you think it strange that he did?"

"Perhaps not as much so."

"Do not sane men have motives?"

"Yes."

"Do not insane men?"

"I suppose they do; but I think sane men act from motives that they can explain; whereas, insane men act from motives which they cannot explain."

"Do you suppose a man insane for acting without a motive, merely because you cannot discover it?"

"No; for the actuating motive may not appear; yet the

actuating motive, if discovered, ought to be adequate to a man of sound mind."

"Have you ever known of a motive adequate to the crime of murder?"

"I have never known it adequate from a moral point of view. I have known it sufficient to induce retaliation."

"Well, in any sense could Freeman have had an adequate motive?"

"I think not; and that is one of my reasons for thinking him insane. I think his indiscriminate massacre a further reason."

"Have you ever heard of the Wyoming massacre?" *

"I have read of it."

"And that at Cherry Valley?" **

"I have."

"If one of those Indians was arrested, and it was proved that he had killed, would you think him insane?"

"I am unable to say—morally so, perhaps."

"Are pirates insane, who live by plunder?"

"Not if they have a motive; they may be depraved, but not insane."

"Have you not seen men who could neither read nor count more than twenty-five?"

"I may have seen such men. Yet I am quite confident that a sane man twenty-three years old, who cannot read but thinks he can—who cannot count more than twenty-seven or eight, but thinks he can, cannot be found in this county."

It had been the warmest exchange so far; it was hot middle July and Van Buren looked tired.

"No more questions," the Attorney General said.

Seward, from his table, smiled at the minister.

Judge Whiting glanced out of the window and looked at his watch. It was late in the day, the finish of the second day of calling defense witnesses. "Court adjourned."

* Indian massacre of settlers in Wyoming Valley, in what is now Luzerne County, Pennsylvania, in 1788, in a Revolutionary War tragedy.

** In New York State.

CHAPTER THIRTY-THREE

Seward Will Get Van Buren's Liver

In the evening, almost each evening, the legal battery for the defense gathered at Seward's home. Sometimes all had dinner in the basement dining room; or they met in the library or in the parlor. The Seward house was full, as Seward liked it: people moving about, a full table, the family around, strong coffee every now and then and let the talk of the case fly: ideas, ideas, let them fall into the center of the room, and the next day carry them into court. Who to ask what? Who to cross-examine and find out what?

Seward worked by the credo: "Whatsoever thy hand findeth to do, do it with all thy might," and he worked on the case in the evening as well as by day. The lawyers roamed the Seward house, sometimes sitting in the parlor, one near the mantelpiece that had been carpentered by Brigham Young, another near Joselyn's picture of Seward and his wife.

The great-grandfather clock on the staircase ticked away the hours, the brilliant oil-lighted chandeliers in the parlor and library were all alight, and the lawyers split hairs, each talking and hoping for the victory of the principle they were projecting.

For, though Seward had begun this venture alone, he had won to his support his lawyer-colleagues who now, but *only now,* saw the depth of their cause.

Sometimes, as now, when Seward was in a period of great stress, he could not sleep well at night. Then his mind was a riot

of ideas; the thoughts flowed in him, like streams running into a lake, and the lake of his imagination was atide with ideas to be used tomorrow in the new battle. He tossed in bed, the images of ideas, of striking points and advantages, leaping into his mind. He hoped he could hold them, and tomorrow hurtle them in court: to *except* here, *object* there, examine and re-examine, always questioning and building in the jury's mind the points he'd make later in the great summary, the summary which must get an acquittal of Freeman.

For secretly, in his heart, he hoped and faintly believed there might be a chance that the jury would come in with the verdict, *not guilty by reason of insanity*. Then His Honor must make other disposition of this case, most likely send the man to the lunatic asylum, but not to his death. In his secret heart he hoped that this jaundiced jury would come in with this verdict, by the power of *his reason*, by the picture he gave them of the man's tortured childhood, of his agonized and lonely growth, of the criminal miscarriage of justice in the theft of the horse; upon these stones, he hoped to build the case of the fatal years in a man-made hell, the hell of England's Bedlam transferred here to Auburn, "loveliest village."

He had entered the fight for the translation of Freeman's massacre into contemporary meaning, staking a portion of his faith on a single tenet of philosophy that characterized his whole life: his faith in anomaly, in contradiction, in the unseen and the unexpected. "Be prepared for the unexpected" was the motto of his life. Nothing mysterious about that, nothing mystical. Just that there were laws of historic process that men did not know about and could not know about because of the great over-all complexity of living. Knowledge was limited; a man's hope and work could be cancelled out by other influences and processes at work about which he knew nothing.

So, even to face a hostile town and a hostile country, even to fly in the face of common sense and propriety, might—if there were enough *force majeure* in the effort—succeed. Truth, if it was an essential truth, had such a power that, even in a situation like this, some kind of advance might be possible—even likely.

He had seen the unpredictable in human affairs. He knew that there was a great and unnatural hysteria over his village. Out of it one day might come sanity and a different attitude.

He would show them and make them see as he saw; he would make them feel that beneath that sable skin and beneath the beaten bones lay a brain that—oh! if they could only see it as he saw it—was a sick brain, with corrugations opaque, thickened, congested, and warped, atrophied and hurt.

As the swarm of thoughts and moods rushed across his brain in the middle of the night, and flushed his cheeks and made sleep impossible, it was as if principle worked in him like an auxiliary bloodstream, as if whole arteries in his heart and brain carried, not blood, but flows of the sense of justice, pulsations and urges of an equity he *must* impart to these bigoted minds. The eternal minds of the province! Here they were, not diseased, like Freeman's, but unopened, like new eggs, untouched by the vitalities of life, incapable of seeing and feeling the depth of the great world inside themselves and in others: so he must crack them open and make them see themselves and see Freeman and see what *he* was getting at.

"You know me," he would say to them. "Do you think I would misrepresent myself to you, now, at this date, after my service to this village? Do you think I am engaged in some deception?" He'd tell them with all the eloquence he could work up and that would be worked up in him by the time summary came. He'd orate as Macaulay had, tell them as the jurists of old England had told the great courts. He'd pick the brains of Shakespeare, and shoot the best of the Bard at them. He'd show them the "loveliest village of the plain"; he'd show them the ugliest, too; and he'd teach them they could only make it beautiful again by seeing that *they had produced* Freeman. They must expiate the murders by a sign of their own growth and magnanimity. He'd show them there was something greater than vengeance; that they must not strike back in the elementary way—with death—as Freeman had.

"I can't sleep," he told Fanny. "I think I'd better have something to eat."

Fanny arose with her husband and they went down to the kitchen. It was the old story, he must have a midnight dinner, and while they were rummaging around, the servant quietly peeked into

the kitchen, for he knew the habits of the squire and that he often had to have a roast or boiled chicken in the middle of the night to put himself to sleep—he had that great and busy a brain.

The servant poked his dark head into the kitchen. "Mr. Seward?"

"Yes, come in, Carroll."

"Shall I dress a chicken?"

"I think you'd better."

"Yes, sir."

The servant killed a chicken and plucked the feathers; he cut it up and cleaned it. Then he went to bed.

Fanny took over and boiled the chicken. They stayed up in the kitchen for an hour and a half, and he told her his ideas for tomorrow's day in court, until at last the chicken was ready. He ate most of it; and after he had talked and had eaten, he was quieter, and he could go back to bed and sleep a few hours. When the rooster crowed, he'd be up and ready to go at John Van Buren again.

CHAPTER THIRTY-FOUR

". . . If the Bow Be Bent Too Far . . ."

Each day the villagers packed the court and there was over them what Luman Sherwood had called, "a quiet grief." It was clear now they would no longer lynch Freeman crudely in the streets.

They were intrigued that this strange smiling killer, who had in himself so much of them, was getting a trial. They even felt resigned that the matter was being handled legally in a court: it was the new time, reason in the saddle.

They had these feelings coeval with their murder sentiments and the fresh deep raw desire to attend Freeman's formal hanging someday soon.

Those who couldn't get into court waited for the new paper to make its regular evening appearance. The *Auburn Bulletin* was zooming. As soon as the sheet reached Genesee Street, at about suppertime, the villagers bought it up. The typesetters worked with a remarkable speed, for 1846. They were able to print the testimony that was given in the first hour of each day's session, and this latest flash of each day's intelligence was read by nightfall. The methods of the New York City dailies were beginning to penetrate the small towns. A headline might say:

DR. MCCALL'S TESTIMONY!

and beneath this, ten or twelve lines summarizing the meaning of his words to the court. That would be followed by a full account of the previous day's testimony.

At night, those who had managed to get into court as spectators, went home to spread the news of the combats in the county building and pass on the details of who said what.

In the county jail Henry Wyatt was waiting to be hung, the date only a month away. He managed to get hold of an extra tin spoon, and at night, when the deputies dozed, he sharpened the edge of the spoon on the stone floor. He'd beat them to the gallows, if he could.

The hot days circled, the hatred of Freeman deepened and set, in a frozen kind of way, as they awaited his dooming; and there was a slow burning rage at "the redhead" who was getting a "fixin' " from the smart "Young Fox" Van Buren.

John De Puy: While John De Puy, who married Bill Freeman's sister, Caroline, was on the stand telling his lifelong knowledge of the prisoner, quietly answering the questions of Seward, Van Buren fidgeted at the prosecutor's table. He actually licked his lips with an air of relish at the prospect of examining De Puy.

De Puy was the best-known Negro in the village. He was a respected man, respected as much as any colored man could have been at that time in that place. He had somehow educated himself and could talk of the antislavery movement. Van Buren knew that De Puy had made a speech at a local church the past Sunday, right in the middle of this trial, saying, "They have made William Freeman what he is, a brute beast; they don't make anything else of any of our people but brute beasts; but when we violate their laws, then they want to punish us as if we were men!"

De Puy had been brought up in the village of Owasco, on the edge of Owasco Lake, and he had lived near the Van Nests fourteen years earlier. At that time William Freeman had lived with him. De Puy then had moved to Auburn, and young Bill had moved along too; so this witness knew Freeman's life story.

And he told it: how Bill was an active and smart lad; lively as any you could find, he said to Seward; a good boy to work, sociable, and lively at balls and parties. Then came his arrest on a horse-stealing charge and his imprisonment. De Puy had seen his brother-in-law in Auburn Prison five times. Once, after Bill

had been flogged in prison, De Puy saw him, and finding him altered, had gone home and told his wife that he thought her brother was no longer in his right mind.

The witness was with Freeman on the day of his release from prison, and it had been a strange day, with Freeman doing odd things, not knowing the value of money, just laughing senselessly. At home Freeman had told De Puy how one of the jailers, Tyler, beat him over the head with a board and knocked him senseless, and after that his hearing was gone. De Puy had asked Freeman if the prison guards had ever done anything about his hearing and Freeman had said, yes, they put salt in his ear.

Then came a question from Seward that stirred Van Buren.

"What about the theft of the horse from Mrs. Godfrey? What do you know about that?"

In a level tone, with his right fist clenched on the arm of the witness chair, De Puy looked at the jury and the spectators, and said, "*I know Bill was at my house all that night the horse was stolen!*"

"Objection!" Van Buren called out.

The judge sustained, and ordered the statement of De Puy stricken from the record.

De Puy told of Freeman's five months about the village, from the time of his release from prison until the murders; how he had worked at odd jobs, troubles he had had with a few farmers who hadn't paid him suitably, and how, as the winter was coming to an end and the month of March arrived, with the winds blowing, Freeman began to say he must get his pay; there was no law for him, couldn't do nothing with them, he'd been to see the peace justices to get his pay for his false imprisonment and they wouldn't give him a warrant, they were cheating him all the time and he couldn't live so. . . . De Puy tried to prevent him from drinking, and told the proprietors of one or two grocery stores not to sell him liquor, and at night Freeman danced and sang in his room, and thumped about and talked to an imaginary opponent, "By God, I'll see you out. . . ."

De Puy was a vigorous man of strong frame, but a nervous man. He spoke glibly, though he was badly upset by the murders, the trial, the closeness of it all to him. He may have over-

talked. He had talked in a church, he had spoken to many villagers, he may have made mis-statements, or he may not have been understood. He may also have said contradictory things. He could have been the victim of a few incensed townsmen who deliberately misquoted him. No one could know . . . but now Van Buren asked:

Q. Have you said you were glad he was arrested because you were afraid of your life?

A. Not in them words. I may have said my wife was afraid.

Q. Did you not say you were glad he was arrested, and that he pretended to be crazy but was sane?

A. I have said I was glad he was arrested because any man ought to be arrested who had done such a thing as he had. I was told that they had catched him, and I said I was glad of it. I have not said that he pretended to be crazy and was sane, as I remember. I never said any such thing in substance.

Had he turned Freeman out of his house?——He had not.

Hadn't he said so?——He may have said so for the reason that his wife was afraid of him.

Had he told Asa Spencer that the prisoner was no more crazy than he, De Puy, was?——He didn't recollect saying so.

Q. Did you not, in substance, say that?

A. I have said he was ugly, but I did not say so then.

Q. What did you say?

A. Can't recollect now.

Q. Why can't you recollect?

A. Can't recollect when I'm bothered.

Hadn't he told Constable Thomas Munroe, during the present trial, that Freeman never was crazy, but was damned ugly?——Didn't recollect of saying that.

Should he recollect if he did say so?——"Ought to recollect if I did."

"Did you not say, shortly after Freeman was arrested, and before he was brought to Auburn, that you were glad he was arrested, and that you were afraid of your life?"

"I might have said something to that effect, but not in them words."

The Attorney General repeated a theme he had employed with many witnesses, that Freeman was a drinker, and drunkenness had

impelled the murders. Had De Puy ever seen the prisoner drink spirits? The brother-in-law answered that he had seen Freeman when he was going to drink, but he took it from him. The Attorney General persisted, wanted a clear answer. De Puy answered he had seen Freeman drink beer, and whether there were spirits in that he couldn't say.

"Have you not seen him drink spirits? Answer that!"

De Puy was reluctant.

"Have you not seen him a dozen times drink spirits?"——No, he had not.

What about several times?——Well, answered De Puy, he may have seen him two or three times, and he added, "I cannot say."

"Did you swear you had never seen him drink anything that looked like spirits?"

"Water looks like gin, and like whiskey."

"I desire you to answer the question!"

De Puy was battered. "I believe I did; think I did."

The Attorney General, playing on De Puy's nervousness, moved to trap him and picture him as a rehearsed product of the defense lawyers.

Had he talked with the prisoner's counsel about what he would swear to?

"I don't know that I have," De Puy replied, with ambivalence. "Only to Mr. Seward. He asked me what I knew of the prisoner and I told him."

What had he told Seward?——Why, didn't remember now what he did tell him.

How had he happened to see the counsel for the prisoner? ——Well, Seward sent for him, to come and tell what he knew of Freeman.

"How many times have you talked with Seward?"

"A couple of times I guess."

"What did they say to you?"

"They asked me questions."

"Did they write down what you told them?"

"I don't know; I suppose he or Mr. Morgan did."

The dual answers, or De Puy's unsuccessful efforts to parry the

driving Attorney General, suddenly ended. The State Prosecutor dismissed him, turned to the bench, and in a tone of anger, called out, "Your Honor——!"

Moving straight toward Judge Whiting, Van Buren demanded, "I ask the Court to commit this witness for gross and willful perjury upon the stand. . . . He has told numerous villagers that Freeman was never crazy, only ugly when he was drunk. He has told that to Stephen Austin, Constable Munroe, Asa Spencer and others . . . yet he denies it under oath. I call upon the jury to totally disregard this worthless testimony, and ask the Court——"

Seward rapped his table and stood abruptly; he interrupted, but instead of objecting, he astonished the courtroom: "*I hope the Attorney General will press his charge!——I like to see persecution carried to such a length!——For the strongest bow, when bent too far, will break!*"

The judge banged the gavel and called for an end of the dispute between the attorneys. "Court will take this under advisement."

Judge Whiting directed the clerk to make a note of Van Buren's request.

CHAPTER THIRTY-FIVE

The Phrenologists Take Over

THE NEW PHYSIOGNOMY
Reduced to $3.00
How to Study All Kinds of Faces

Foreheads—High, Low, Broad, Narrow.
Noses—Large, Small, Roman, Pug.
Eyes—Blue, Black, Grey, Hazel, Large, Small, Sleepy, Expressive.
Mouths—Large, Small, Communicative, Secretive.
Lips—Red, Pale, Thick, Thin.
. . . *Cheeks*
. . . *Chins*——

In the early part of the nineteenth century, Dr. Franz Joseph Gall, a Viennese, astounded the medical world of Europe with inquiries into the shape of people's skulls, and his work led to genuine research into the medical nature of the brain and the nervous system. In the beginning he observed that persons with prominent eyes often had good memories; and he believed that people were combative who had protruding areas behind the ears. He studied wide skulls, narrow skulls, all the features, and he worked out an elaborate schedule of relationships between human nature and the shape of the head. Gall traced the way in which fiber cords in the spinal column made their way into the cerebral hemispheres, connecting with the gray matter of the brain.

But Dr. Gall's disciple and publicist, Dr. Johann Spurzeim,

gave a different turn to Gall's work. Through the popularizing efforts of Spurzeim, Gall's craniology became converted to phrenology, a kind of glorified parlor game that swept Europe and America.

In 1832, at about the time Seward was a State Senator, Spurzeim came to America. He was the rage in Boston—where he died soon after his arrival. The effect of that was to spur the development of phrenology enormously; until it became a principal racket, as well as a dubious medical reliance.

Phrenology claimed that it was a science, or a near-science, or a division of medicine. Phrenologists had offices, established medical practices. People came to them—much as they might go to psychoanalysts today—for readings of the "bumps" on the head, the lines, the shapes, the skull protuberances. The best phrenologists were groping toward the truth that certain portions of the brain were related to certain parts of the body: it was an intuition, before neurology made its appearance and literally charted the relationship between the nervous centers and the brain. Often their observations sounded fanciful, and better-based medicine looked askance at the "science." But it influenced the development of neurology, and in particular, students of insanity. Phrenologists were stationed around "lunatic" asylums, and general practitioners sometimes relied on their advice.

In the business of "bumpology," as it was sometimes cynically called, the experts worked with what they called calipers, a two-pronged, tweezer-shaped measuring instrument which was used to determine the various breadths, depths and heights of the contours of the head—the bumps, in fact.

The phrenologists made their measurements with all mysticism and effect, and then, as an instance, murmured, "Goodness me, you have a perpendicular head; it stands out three and one-half inches before the Zygomatic Arch—you must have a very strong mind!" Specialists came along, developing the "art" into a commerce. They massaged the bumps so as to produce in the subjects an increase of desirable traits, which would enhance them at love-making, money-making. Since the Bump of Veneration was at the top of the head, a phrenologist mystically pawing the

top of a man's skull pretended to make him more religious. That, of course, had to be watched, so it wasn't overdone, because it wasn't right to develop any one propensity too much.

There were others, sounder medical men of the sort testifying in Freeman's trial, who didn't go to such lengths, and actually tried their best to make judgments on human behavior on the basis of skull and feature shapings.

In a manner of speaking, phrenology, in its American development, came of age in this trial.

Phrenology had been sweeping the country for the past sixteen years, since Spurzeim's visit—and now Seward prepared to sweep the courtroom with it. Most medical men, however, learned in the soundest developments of medicine, fell in with the craze, and though Seward was actually of two minds about this "study," he felt that it contained some sense, and if he could utilize it in court, he should. In view of the fact that Freeman wore that incessant imbecilic smile, he was certain that phrenology, more than anything else in the world, would be a help.

Actually, "bumpology" had confounded and dogged Seward for a long time. As he had completed his governorship, a businessman, John Colt, had murdered a printer named Samuel Adams in New York. The well-connected Colt had endless influential friends who appealed to the Governor to commute his death sentence. Seward couldn't do it while he knew that other murderers, poor men, uninfluential, were in New York State cells awaiting death. There was a great commotion in the city, including a fire at the Tombs; Colt committed suicide in his cell, someone having slipped him a knife. But during the appeals to the Governor, a phrenologist professor came to Seward and demonstrated that Colt was a murderer all right, but society had cultivated the wrong bumps on Colt's head; therefore society ought to be hanged, not Colt!

Seward, consequently, looked askance at some lengths of the great game that had grown up out of Gall's craniological researches; but the President of the New York State Medical Society, a sound man about mental disease, was also a leading practitioner of phrenology. . . .

Dr. John McCall: Phrenologists claimed that they could tell a crazy person by the size and shape of his skull, and now, on the stand, Dr. McCall, staring straight at Freeman, observing his head and features, and questioned by Seward, talked about what he saw.

First he gave an opinion grounded on non-phrenological bases that Freeman's brain was diseased. "I cannot say when it commenced, or what its first manifestation was. It has, in my opinion, been coming on gradually, and from the testimony I conclude that it commenced in the State Prison. It is very evident to me that his deafness came upon him while there. He was struck on the head, and that may have occasioned the deafness, and the same injury may have extended to the brain."

Van Buren cross-examined as a man who himself accepted phrenology, and recognized it as a valid approach in this case, and he questioned as one who had studied Spurzeim or his predecessor, Dr. Gall. At the same time he was profoundly fearful of the prestige of the phrenologists. He tried to keep them off the stand or hamstring them. The faith of the people in this technique was enormous. It had sifted down even to the children. The jurors might be awed by the big men from Albany.

"What," he asked, "are the external evidences of his insanity?"

Dr. McCall glanced fifteen feet from his seat into the face of the grinning Freeman. He stared a moment and then said:

"The external evidences of his insanity are found in his general manners, the expression of his countenance, and the idiotic smile. I would look at his eyes also, as they make up the general expression of a crazy man. The movement of this man's eyes is unnatural. It moves rapidly, and generally upward, but sometimes downward. There is not much intelligence expressed by his eye; it rather denotes insanity. The moving of his eye alone would not be evidence of his insanity, unaccompanied by other circumstances; all must be taken together.

"His head does not denote intelligence. His head, in the region of the brain, is smaller than that of persons of his age who are healthy. His whole head is smaller than a healthy man of his age. It is smaller than Dr. Brigham's or yours."

Dr. McCall carried his physiognomical observations beyond

Freeman's head to the rest of his body. His body inclined forward, and sometimes sidewise. His arms were rather elevated.

Van Buren interrupted. "Isn't it possible he leans forward so as he may hear better?"

"I don't think his leaning forward is because he is trying to hear, because he does so when there is nothing to hear. His position is peculiar to demented patients."

Seward re-examined Dr. McCall with one question. What did the doctor think about the verdict of the preliminary trial that Freeman was sufficiently sane to know right from wrong?

He did not consider that a verdict of sanity, he said; it fell far short of it.

Dr. Thomas Hun: Dr. Hun, of Albany, was one of the two doctors who had been turned away from the County Jail by Sheriff Pettibone.

Hun told the court he had been practicing medicine for sixteen years and he now worked at the Albany Medical College. Then he recounted how he had seen Freeman on Wednesday morning, the fifteenth, but the next morning he and Drs. McNaughton and Brigham had been prevented from visiting Freeman. He was telling this to Seward when the Attorney General asked the defense attorney what he expected to prove by this witness.

"Why," said Seward, "that Freeman was insane at the time of the crime."

But Van Buren objected to this witness. He cited the preliminary verdict of July sixth; he said that that had proved conclusively that Freeman was sane on the day of his murders, and there was no evidence that could contradict that.

"Well, then," asked Seward, "couldn't Dr. Hun, who understood phrenology, examine Freeman here in court and say what he believed, from Freeman's personal appearance?"

The judge delivered a ruling. Dr. Hun could examine him here in court or pass upon any knowledge in his possession before the sixth of July, but he couldn't give evidence on the basis of any discussions in the jail cell with the prisoner since then.

"Exception!" Seward said.

Dr. Hun, limited to a phrenologist's estimate of Freeman's

possible sanity or insanity, looked across the room at the prisoner, studied his facial contour, head shape, manners, and said, "If on the twelfth of March he appeared as he does now, I would suspect him of being insane then."

Seward felt he was badly hamstrung by judicial trickery, a tactic of collusion between the Attorney General and Judge Whiting.

There were a series of attempted questions and a spattering of new objections, sustainings and exceptions.

That legal play went on for several minutes. Seward couldn't get a question across without the double play between Van Buren and the judge. He could stand this no longer.

"May I call for a moment's suspension of procedure while I consult with my colleagues?"

He could.

In a few minutes he came back before the bench, a paper in his hand, and he read seven objections to the decision of the court based on the rejection of testimony since the verdict of the prior trial.

Seward took the position that the decision of the other jury was only a decision, in transition, toward this trial; and that the whole purpose of the present trial was to determine the mental condition of the accused.

The judge reaffirmed his decision.

Then, for a series of twenty questions, Dr. Hun was permitted to talk about the evidence he had heard in court. The perennial question of Freeman's good memory, and the relation of memory to insanity, was aired again; and then Seward turned his witness over to Van Buren, who again entered eruditely into the realm of phrenology. . . .

As Van Buren talked, he sometimes looked at Freeman, and Dr. Hun also studied the prisoner at the bar. . . .

How was the general expression of his face?——*It was idiotic.*

How was the eye?——*It had an idiotic expression.*

Would he describe that idiotic expression?——*He could not describe it more than he could the eye of a person who was angry.*

Then he considered that the eye of the prisoner indicated idiocy?——*Not in his eye more than in any other feature; however, it was dull.*

Was his eye dim?——*He didn't say that. It lacked lustre.*

Suddenly the testimony went fantastic. . . .

Van Buren: Did you ever know a case of delusion where the patient had not lost the power of comparison?

Dr. Hun: If he fancies a man to be a horse, and understands that a horse is larger than a mouse, he would then have comparison.

Van Buren: But would he compare that horse with a man, or that man with another man, so as to see that a man wasn't a horse?

Dr. Hun: He might know that a horse was less dangerous than a lion, and might not think every other man a horse.

Judge Whiting wore a strained look. The associate judges bent their heads, like deaf men trying to hear.

Freeman smiled vacantly at the two men fighting over him. Seward sat at his table, trying to keep pace with the questioning. Phrenology had been bypassed, and the duel of the two wits now reached the subject of duelling itself. . . .

Van Buren: If a man will shoot into a crowd, would you say that indicated insanity?

Dr. Hun: I think that no sane man would shoot into a crowd.

Van Buren: If it appears in this case that the prisoner was in want of work, and went to Van Nest's and asked for work, and then passed two men whom he might have killed, to kill the Van Nest family, do you not think the killing might be from sanity and revenge?

Dr. Hun: No sane man would commit a murder so atrocious for that reason only.

Van Buren: Have not men called others to the field and killed them in duels for a slighter motive?

Dr. Hun: I do not think any duellist would have killed his man, had the latter been unarmed; but that is a very different act from the one for which the prisoner is on trial.

The duel of the doctor and the lawyer was over.

Dr. James McNaughton: The same legal obstructions were placed before the New York State Surgeon General. He too must testify to Freeman's sanity only on the basis of how he looked here in court.

"If I knew nothing of him," the doctor ventured, "I should

from his appearance alone, say that he was an imbecile. He is either idiotic or partially demented."

Freeman smiled steadily at the physician, as generously as if he had been praised.

Here Dr. McNaughton paused and peered at Freeman. He moved his head faintly this way, slightly that, gazing across the open space to the stolid small man at the bar. The spectators glanced at Dr. McNaughton, and their eyes shifted to Freeman, then back to McNaughton. The judges watched the phrenologist as he made his assay.

The Surgeon General of New York State looked at the villagers. He tossed one faint glance at Judge Whiting and another toward the defense associates at their table. Then he glanced upward, looked out of the window into the light where the sun had declined for this latest day of court, and he opined:

"If I were to judge from his looks alone, I should say that he never was particularly sane. Nature has written that pretty clearly on his countenance."

CHAPTER THIRTY-SIX

"Call Dr. Brigham . . . !"

Dr. Amariah Brigham, Superintendent of the Utica Asylum, was forty-eight, and he was to live only three more years after his testimony at this trial.

He'd been born in Edinburgh, and had brought to America some of the advanced English and French influences in mind experiment. In 1833, he published *Remarks on the Influence of Mental Cultivation and Mental Excitement Upon Health,* a paper that described the increasing tension in American life at the time, "leading with frightening rapidity to a more frequent and fatal disease than insanity—I refer to organic disease of the heart," which has a familiar ring a century later. His roots were earthy; insanity was no mystery to him, it was a disease of the brain; phrenology interested him insofar as it might be helpful; and largely his testimony relied upon his lifetime of experience in mental institutions.

He had visited hospitals in America and Europe, and for three years was director of the Hartford Retreat, in Connecticut, an institution famous for its sympathetic treatment of the insane.

No man in America had more prestige in this field than he, and he now faced the Attorney General, Seward having completed direct examination.

They played at giants, tossing their erudition back and forth, Dr. Brigham his experience and status in medicine; Van Buren,

his courtroom polish, his culture, absorbed at the embassy in England. . . .

The Attorney General, bent on proving revenge was Freeman's motive, asked the physician whether he was familiar with Shakespeare's character of Shylock.

"I have read what he says of him."

Did the doctor believe Shylock was crazy?

"I find other explanations for the conduct of Shylock."

"Is not a desire for revenge a motive that would indicate sanity rather than insanity?"

Dr. Brigham replied that revenge might operate in certain cases, but depending upon the degree of it that existed.

"You have spoken of his smile. When a man smiles how can you tell what he smiles at?"

He could not tell, with certainty, the doctor replied, yet if one of the jurymen smiled, the juror could tell why, while the prisoner couldn't.

Van Buren was irked by the doctor's coolness on the stand, and his voice took on a note of irritation as he asked, "How do you know that the prisoner's smile is without a prompting motive?"

Brigham answered, not icily, but swiftly disposing of the question: "I am not omnipotent and, therefore, do not know."

Did the distinguished physician believe Freeman had queer thoughts? "I dare say he has many queer thoughts."——Suppose he thought there was a good joke going on here, would it not be natural for him to smile? "If he understood a joke he naturally would."——Suppose he should happen to think of hooking eggs sixteen years ago, might he not smile? "Yes, he might, but I regard his constant smiling as indicating insanity, rather than a recollection of hooking eggs."

The spectators, jammed to the walls and packed in the rear of the room, listened, rapt, all of them descending, with the debaters, into the inferno of the brain . . . for that is what it then was, a guided, or misguided tour of the hell of the unknown . . . with the two intellects departing steadily from protocol and courtesy, and openly snapping at each other.

Suppose, theorized Van Buren, Freeman thought he was blowing us all up in this trial, would he not smile? "If he knew

what was meant by such a remark, he might."——Wouldn't a sane man smile if he thought so? "I think a sane man situated as Freeman is, would not be very apt to smile at it."

Van Buren groped unsurely, and entered a deeply hypothetical realm, hoping to shake the Utica man. "Suppose I should take this knife [he held the knife with which Freeman had slain John Van Nest] and kill one of these jurors, what would you say of my sanity or insanity?"

"If you should get up and kill him and then sit down, in the absence of any other circumstance, I should think you insane."

Van Buren was trying to trip up the doctor on some example that would illustrate where jurisprudence treads a narrow line between revenge and insanity; revenge that was abnormal and intense, which was how Van Buren portrayed Freeman's, and insanity where there was supposed to be disease.

It was a reasonable line for the prosecution to pursue because the defense had a difficult, almost impossible task in proving the existence of disease in the prisoner.

Van Buren pressed on, meshing himself the deeper in Brigham's grasp. "If I should go out and steal a hundred dollars and then come back in again and sit down, would you swear I was insane?" Brigham would.

They sparred about the nature of insanity, Brigham calling dementia an advanced stage of it. The attorney asked how long it was after insanity came on before a patient arrived at dementia, also when had Freeman gotten his delusion about wanting pay? Brigham couldn't say further than from the testimony of witnesses, though he thought perhaps Freeman was under a delusion when he came out of prison; but the Attorney General, persisting with the theme of depravity and dishonesty, asked, "Do you think stealing hens any evidence of insanity?"

"It may or may not be. If you, Mr. Van Buren, should rob a hen roost tonight I should think you were crazy."

"And the same of Governor Seward, I suppose."

The spectators laughed lightly at the spectacle of the big opponents using each other as exhibits in insanity. Their anger with Freeman and hostility to Seward had neutered into enjoyment of the court spectacle, let the chips fall. . . .

"Yes, for it would be equally strong."

Wasn't malice a motive for mischief and crime? Brigham answered that he thought it was. Couldn't a sane man act from that motive? Brigham replied he could readily conceive of a sane man acting from a bad heart.

"Then suppose a man should steal and wind up with a murder, would not malice be the most natural inference?" the attorney pried. But the doctor said upon such a bare hypothesis as that he wouldn't want to infer either sanity or insanity.

The Attorney General leaped back onto the most dangerous ground of all, for him, in a duel with Brigham, that of fanciful hypothesis. "Suppose," he asked, "a man should fire a gun into a crowd of people, and kill several, and you were informed that this man had previously said he intended to do so." On those facts alone, what would he infer in respect to the man's sanity?

"If you, Mr. Van Buren, should do that act, I should think you insane."

"Suppose I should saw off the posts of a railroad bridge so as to endanger the lives of passengers who crossed it, would you infer malice or insanity!"

"I should think you deranged," the doctor answered, and he was smiling.

"Why would you swear so?"

"Because it would be contrary to your character, and what I have known of it."

Van Buren quit that line of questioning, as if he discovered he had entered an endless maze, but was being led by someone who knew the way. He glanced at the audience, which was amused at the way Brigham responded.

Dr. Brigham was preparing to bring phrenological "science," or his common sense and experience, into the court. He had earlier, in direct examination, told Seward that he had probably seen as many insane men in this country and Europe as any other man alive. He had said that anyone who had lived for years as he had among the insane could detect derangement in a white person from the countenance alone, even though such a person might be sitting entirely still.

He now interrupted Van Buren to point at a man sitting quietly in the third row among the spectators.

"I see a deranged man there," the doctor said. "I saw him across the courtroom the other day, and knew from his looks that he was insane."

The man on the spectators' bench was Daniel Smith, in his forties, with a pallid hue and frenetic eye. He stared at Dr. Brigham and he may have been aware that the specialist was speaking of him. Two expressions alternated in Smith's eyes, a momentary vacancy and a momentary intelligence, shifting like a semaphore; he apparently kept pace with the trial proceedings, yet lived, in part, in his own, another world.

He was a kind of harmless character, and he walked with an odd shake, often talking to himself, saying, "Shouldn't ought to have gone there," repeating, over and over, in a kind of echolalia, "Shouldn't ought to have gone there—Australia, Australia, Australia." He'd never been to Australia, and the townsmen good-naturedly said to him, in the streets, "When you going back to Australia, Daniel?"

The Attorney General turned to the judge. "Your Honor, I want to call Daniel Smith . . . Is that all right, Judge Whiting? I should like to call the exhibit mentioned by Dr. Brigham."

The judge motioned to an attendant.

"Call *Dann-n-n-niel Smith,*" the court crier declaimed, and Daniel Smith, the man with the echolalia, all abeam with importance, and seeming to understand some of the performance, came forward.

"Sit there," the bailiff said, motioning to a chair in the dock, about six feet away from Freeman.

Daniel Smith sat unobtrusively and listened and watched while Van Buren resumed with the physician. The Attorney General asked whether it was at all difficult to detect Smith's insanity.

"It is not, in that person."

"Then why did you call the court's attention to Smith?"

"I had earlier mentioned the difficulty of detecting insanity in colored people, because I had not seen so many that were insane. In the case of Freeman there is more difficulty on mere appearance."

"But Smith is not a colored man?"

"Certainly not. But I meant to convey the idea that, if he had been, I might not so easily have detected his insanity."

"Why cannot an external appearance in a black man be discovered?"

"They may be discovered; but the emotions and feelings are not so easily discovered as in white people."

"Would there have been any different expression in the eye of Smith had he been a black man?" It was a question in phrenology.

"I do not know as there would." An answer in the same creed.

"Is not the eye, of all others, the feature which is most indicative of the condition and operation of the mind?"

"I think not. The muscles of the face indicate most."

"Is that a feature?"

"They move the features and portray the emotions."

"Can you name any other feature by which you perceive that Smith is insane?"

Brigham looked sharply at the willing Daniel Smith.

"I cannot. It is his whole appearance."

"Can you name any feature that denotes insanity more than the eye?"

"Yes, the muscles of his face, as I before stated. No one feature distinguishes insanity. It is the play of them that gives the expression."

"What constitutes the features?"

"The muscles of the face. They cause the expression and show the operation of the mind."

The trial went on. Smith remained in the dock, but the testimony turned elsewhere.

Throughout the trial there had been two tall piles of books on the defense table, perhaps fifteen volumes altogether. Frequently the jurors, the associate judges, the spectators glanced at this array of erudition, the works of Ray, Pinel, Prichard, Benjamin Rush, Esquirol, and others, American and European. It was as if here, in these books, this exploration, this body of discovery and experiment, lay the latest judgments, perhaps even the proof of the nature of the mind: and this was to some extent true. Seward had

taken his departure from these books; he had read them on the boat from St. Louis to New Orleans; he had dipped into them during the winter in the trial of Wyatt; Fanny Seward had marked off dozens of passages; and his colleagues, Blatchford, Wright and Morgan, had examined these writings.

The two stacks of books were erect on the table, like lamps in the darkened court. . . .

Abruptly Van Buren thrust at the doctor, "In the progress of this investigation have you been unbiased?"

Dr. Brigham's eyes narrowed; he was a lean, scholarly-looking man, wearing glasses, his hair whitening, and he answered, "I have been as anxious to find this man sane as insane."

Van Buren: "Have you been as anxious to satisfy yourself of sanity as insanity?"

Brigham raised his voice slightly. *"If there is a man in the world who should be anxious that this man should be put out of the world it is myself."*

Suddenly Van Buren pointed at the exhibit on Seward's table. "Whose books are these in the hands of the prisoner's counsel?"

"I think a considerable number of them belong to me."

"All of them—do they not?"

"A considerable number."

"You furnished them then, that they might assist the prisoner, *yet you tell me. . . .*"

"I sent them to Governor Seward at his request, as I would to *any other counsel* who should desire it——!"

The Attorney General had made his point; the doctor's books were in the defense lawyers' hands. He glanced at the jury. . . .

Then, for a half hour the cross-examination shot crazily into various planes, gliding in and out of different levels, like a kite broken loose in the sky . . . and the two intellects chipped at each other, the tone of Van Buren becoming increasingly caustic, for he couldn't corner the physician in contradiction. Steadily he moved into an area of insult, and the nippier the Attorney General became the more coolly the doctor answered. . . . Seward watched from his table, proud of his witness, but not underestimating the adroit Attorney General.

Insensibility to pain? Many insane appear insensible to pain. When their wounds are being dressed, they often show no pain. We put setons into their necks, and perform other operations on them—and they perform them on themselves. I had a female patient who would not eat. We fed her with a stomach tube. To resist us she sewed up her mouth strongly. I cut the stitches out, but when I was doing it, she exhibited no more feeling than if I had been at work on a piece of leather. *The rationality of the insane?* We have patients who paint, write letters and orate. We have ladies who paint flowers and play on the piano. Last July we had a poem from one insane person, and from another, an oration that would do credit to a statesman. *The celerity of Freeman's act a sign of insanity?* Yes, of course. Have always observed that the insane act much more quickly than the sane. They will tear their clothes into inch pieces, destroy their beds, and break their bedstands in a period of time so short you wouldn't believe it possible. *Escape is incompatible with insanity?* Not at all, Mr. Van Buren. Tom Sanderson, now in our Asylum, stabbed a young man with a pitchfork a hundred times, buried him under a floor and then fled on horseback. Rabello, in Connecticut, killed a boy who stepped on his foot, and then ran off. *Sleeplessness as a sign of insanity?* One of the most indubitable symptoms. Wrote an article on that, it's been extensively copied and quoted. *Insane ancestors a predisposing cause?* It's estimated that one half of the insane have, or have had insane ancestors. No disease so likely to spread in families once it has appeared.

Sometimes their exchange rippled, more like a conversation than a cross-examination, or as if there occurred an unthought out or unforecast line of talk—as in fact, developed. Then, to Van Buren's pecking questions there might be curt, staccato answers. . . . No, the prisoner's difficulty is not monomania, he had homicidal monomania. . . . Yes, any insanity is called homicidal monomania when it is connected with homicide. . . . Yes, I have had several such under my care . . . No, none of them ever get perfectly cured, in my opinion. . . . Yes, Esquirol discusses that. . . . No, he says they become raving maniacs and die. . . . Yes, if Freeman were acquitted, I could keep him in the Asylum. . . . No, I do not believe any man acquitted of murder on grounds of

insanity ought to be allowed to go at large. . . . Of course, I believe he could have been undergoing a great change in prison and it not be detected; from what I know of the management there I think he might be there five years and his keepers not find it out. . . . His aunt liquor crazy? Well, the insane are usually fond of liquor, and many people are not insane when liquor is taken away from them. . . . No, it wouldn't affect my opinion as to his sanity if you did prove his uncle Sydney were harmless. . . . Inherited his smile from his grandfather? I don't believe any such smile as his was inherited, except by disease. . . . Yes, the celerity of his act was evidence of insanity. . . . No, I don't think the motive was revenge. I cannot think he killed the child for revenge. . . . Yes, deafness affects the auditory nerve, and deaf crazy men are generally incurable, but deafness is no symptom of insanity. . . . No, I would not say that there is anything in deafness that tends to insanity, for the deaf are not always crazy, as the jury knows as well as myself, but my impression is that deaf persons are more apt to become so, as there are more deaf persons in the Asylum, than out of it, in proportion to the number of inmates. . . .

Inversely Van Buren plied a torrent of questions, sensible and senseless, at the doctor. Might not Freeman's sleeplessness indicate rum rather than insanity? . . . Suppose he wanted to exterminate the race? . . . Suppose it be proved that he said he killed the child lest it made a noise? . . . One by one, as these questions came, Brigham answered, out of his medical experience. . . . So far as the circumstances of the prisoner's escape had any bearing either way, did they not prove that he was sane rather than insane? The doctor answered not necessarily; he had known crazy people to escape from the Utica Asylum and go to lawyers and seek process for him.

Did the doctor think the prisoner's getting thirty miles in fourteen hours was speedy, and therefore a sign Freeman was in excellent control of himself? Brigham didn't think that was fast travelling on horseback. This drew a snicker from the spectators, most of whom owned horses.

Then, with sarcasm, "Well, Doctor, is there anything which sane men do that an insane man may not do?"

"Perhaps I may say," Brigham answered, "that there is

nothing that a sane man can do which some insane men will not do; yet insanity is not to be judged by isolated factors."

All definitions of insanity required that a change occur in the subject from the original normal condition. Both prosecution and defense doctors acknowledged that. Now Van Buren demanded to know why the doctor insisted that there had been a change in the prisoner. Brigham answered that reliable witnesses had so testified; he mentioned their names, and he included Bill Freeman's mother.

"Don't you believe the mother, who is a common drunkard, to be unsafe evidence?"

"No; if drunkards were never to be believed a great many would not be permitted to testify."

Most of these points had shuttled in and out of the trial testimony daily, dealt with in large or small by one witness after another, and until now Van Buren had been able to manipulate many witnesses, even confusing the lesser doctors, but the same aspects, in Brigham's hands, emerged illumined. Van Buren had been somewhat thrown by the impact of the phrenologists testifying just before Brigham, and now here was a man who seemed to know "all the answers." His clarity of response made the Attorney General seem like some questioning student in the classroom of an authority, and the prosecutor realized his relation. He switched from time to time into other channels: a mood, an insult, an attempt at humor or sarcasm.

They were discussing Freeman's taciturnity, and the doctor mentioned that he had in his charge at Utica several murderers, and he mentioned their names, who never asked questions either of Brigham or of the keepers; he cited that as a symptom of insanity in such cases.

Van Buren thought he saw an opportunity to turn that idea against his witness. He knew that Brigham was a New England man, and, with a slur in his voice, he asked, "Is not the asking of many questions peculiar to a certain class, to the Yankees, as they are called?"

That opened a run of only sub-related testimony, mostly an exchange on the level of recrimination. "I think not peculiar to the Yankees, although it has been so stated. I however think it is

a slander. The English, as a general rule, ask more questions than we do."

"How is it with the Turks?" Van Buren had the jingle of laughter in his throat.

"I have no acquaintance with them."

"How is it with the North American Indians?"

"I am under the impression that they talk among themselves, yet perhaps not as much as other nations."

"May not Freeman's Indian maternity explain his taciturnity? He has Indian in him."

Brigham answered he didn't attach much importance to that, because the testimony showed him to have been sociable, and he added, "Colored people are generally sociable."

Had the doctor heard of Indian massacres? He had, Brigham said, but these often occurred while the Indians were fighting for their country.

Van Buren was everywhere on the defensive. He turned back to his main contention, that Seward was the true instigator of the massacre. . . .

There had been incessant exchanges between the medical men and Van Buren about the nature of insanity. It was clear that medicine in that time had no agreement on the classifications of the disease. Physicians disagreed, and each had mentioned three or four or five kinds of insanity. It is a principal characteristic of any area of investigation that uncertainty of classification characterizes its lack of scientific maturity; and Van Buren's questioning had, whether by intention or not, established the prevalent amorphous and uncertain classification of mental disease. Seward's questioning had also elicited this diversity. Even among the principal mental hygienists there was this divagation and lack of definition.

There had been several exchanges between Van Buren and Seward's leading medical witnesses about the nature of some forms of insanity. Was insanity contagious or epidemic? What was hysteria? Could dark and sickly mental influences spread from person to person? Van Buren had encouraged this testimony for it served his central objective of holding Seward responsible. Dr.

John McCall, the phrenological President of the New York State Medical Society, under cross-examination had said, *"In the strict sense of the term, I should not consider insanity contagious, yet at times it is epidemic. It sometimes appears epidemic on the coming of warm weather."*

First the Attorney General would make sure that the respectability of Dr. McCall was clearly established. "What is the professional standing of Dr. McCall?" he asked.

Brigham described his colleague as a highly regarded member of the medical profession.

"What is his authority on questions of insanity?"

Brigham answered guardedly. "I should not think any more of his authority than I would of any other respectable member of the profession, except from his opportunities at the Asylum at Utica."

Van Buren: "With his opportunities, how do you rank his authority?"

Brigham, sensing some dangerous line of inquiry, answered with qualification. "As highly respectable; *yet he cannot have a great knowledge of insanity.*"

"Do you agree with him that insanity is not contagious?"

"Insanity as we see it is not contagious," Brigham answered, suddenly grasping fully where Van Buren was headed, and turning the line of objective in another direction, "but there are instances in which whole communities become deranged, as for instance in the days of witchcraft in New England."

"Did not this insanity you speak of in New England affect the legislature?" Van Buren asked.

"Laws were passed against it and the witches were hung."

Softly, sarcastically, Van Buren echoed, "Were witches hung?"

Staying in full possession of himself, but grasping the elbow of the witness stand, Dr. Brigham answered, "Those who were said to be bewitched were."

"And do you term that insanity?"

Brigham turned a glance at Judge Whiting, then outward to the spectators. "They were in a state of great excitement, in which common sense did not prevail; they were under a delusion. . . ."

There was a shuffling of feet throughout the court. The towns-

men were being accused of hysteria and incitement. Brigham had drawn a parallel between New England witchcraft and the riotous mood prevalent in this village.

Van Buren pressed onward, in his own direction. "Do you agree with Dr. McCall that insanity is an epidemic?"

"I have no other illustration of it than the case of witchcraft; we have history for it."

"Is there any particular season of the year when this epidemic is most prevalent?" Van Buren persevered.

"I have no knowledge that it is more so at one season than another." That answer was agreeable with Van Buren; McCall had said warm weather brought on epidemics of insanity, and Freeman had acted in the winter.

Now the Attorney General thrust his main question at Dr. Brigham: *"Is homicidal insanity contagious?"* If Brigham answered yes, he might himself condemn Seward . . . and Brigham replied:

"I don't think that form of insanity is; yet I am always sorry to hear of one case for fear it will induce others to imitate it. In that way, it may perhaps, be called contagious."

Van Buren had got a qualified, but helpful answer. Apparently it was true that one man could get an idea of murder from another man's deed!

Van Buren pushed his advantage. He had two more "contagion" questions by which he hoped to establish his implication that Seward's defense of Wyatt had driven Freeman onto his course.

"Is suicide contagious?"

"I think it was in the French Army, until Napoleon put a stop to it."

Good, now to show that the hysteria at the time of the Wyatt trial had spread to Freeman: "Is hysterics contagious?"

That was the question that gave Brigham the chance to stem this line of questioning. He looked pleasantly at the prosecutor. A slight smile played around his mouth as he glanced meaningfully at the open court, and he answered:

"They seem to be catching!"

Van Buren stared hard at Brigham. There was a ten-second pause and the two men gazed at each other.

"No more questions," Van Buren said.

Seward arose at the defense table and addressed the Court. "Your Honor, this closes the testimony for the defense. My colleagues and I believe, however, that the jury ought to have the opportunity to personally examine William Freeman——"

"Objection," cried Van Buren.

"Sustained," said the judge.

"Defense rests," said Seward, and he returned to his seat.

Seward busied himself with quill and paper. Fanny could not be in court today, the big day of Brigham, and he must tell her something from his heart.

He scribbled hurriedly.

Then he motioned to his clerk, Parsons, who sat in the front row of the spectators a few feet away. He walked toward his assistant. "Charles," he said. Parsons reached for the extended note. "Take this to my wife, will you?"

"Certainly, Governor."

A few minutes later Fanny read:

Sweetheart:

Brigham was wonderful. Van Buren could not stir him.

I have, darling, a strange and very good feeling. Anything is possible, anything.

The jurors are stone-faced, twelve stone men on the side of the room, and their faces do not seem to move even when the rest of the courtroom murmurs or stirs. They are like brilliantly alive dead men, and I think it somehow may mean as much for us as for them.

Brigham was wonderful. We may . . . God knows . . . in this world of inverted fortune . . . We may really win this yet. I have good hope.

Love,
Henry

PART FIVE

On Horseback To The Stars

CHAPTER THIRTY-SEVEN

When Reason Goes, Where Does It Go?

"The doctors want your bones, Bill, are you willing they should have them?"——Bill Freeman didn't know.

"*You willing they should have your bones, Bill?*"

Dr. Sylvester Willard, a local doctor was talking to the prisoner in his cell, trying to frighten the man into statements of conscience and admission of guilt.

"Don't think much about it," Freeman answered.

"You ever seen human bones, Bill?" the doctor persisted.

"Yessir, in Dr. Pitney's offices."

"Don't you believe they want your bones?"

"No."

That had happened during the witness-manufacture time, and now Dr. Willard, one of the numerous prosecution witnesses, told the court how he had tried to shock Freeman out of his indifference —and it hadn't worked—but he told the court Bill sure enough was sane. Alcohol had brought Freeman to the point of murder, he said.

Seward cross-examined:

"Does drunkenness affect the reason?"

"It sometimes destroys it," Dr. Willard answered, "or in such a state it is sometimes gone."

"Where does that reason go?" Seward asked, smiling.

"I never kept track of it, to know where it is gone."

The fantastic dialogue of lawyers, villagers and doctors went

on for two more days; court protocol giving the prosecution a final opportunity to call witnesses.

Van Buren called thirty-one important and secondary witnesses. Seward handled most of them briefly, men like Dr. Willard who had had small experience with the most mystic of all diseases.

"Dr. Darrow, what have you read of insanity?"

"Not much in recent years; I do not give a professional opinion, but only a common sense opinion that the prisoner is sane. . . ."

"Dr. Clary, you say you've practiced medicine thirty-five years, and you believe the prisoner is sane. How often did you see him in jail?"

"Three times, Governor, but like I say I have seen so little of insanity in my practice I oughtn't easily to express an opinion. . . ."

"Dr. Hyde, what did you discover in the prisoner?"

"Well, I wasn't able to discover any signs of derangement. . . ."

"Dr. Gilmore, you've heard the testimony, what do you think?"

"It's hard for me to separate my own examination of the prisoner from what I've heard testified about him, yet it's my opinion he was not insane."

Van Buren brought them on, one after another, eight local physicians whose livelihoods were bound to the opinion of the townsmen; they may have been honest, or they may have been ignorant; at any rate they hedged, or they said the accused was sane. Seward badgered some and let others go, and he accused one or two, like Dr. Willard, of going to the jailhouse to confuse and harass Freeman.

The roll of town witnesses came on, like a column hurled at the jurors, ten or fifteen minutes to a witness, quick dashed questionings, swift dispositions, each witness with some knowledge of or connection with Freeman, and they spoke from their chests,

their throats, their hearts, telling how Bill was sane. The prosecution's picture, always the same: the wild boy runaway, the saucy child who swore and stole, and he drank, and he murdered; and the defense, through its cross-examination, countering with a pattern of a lifetime of victimization, a man born to tragedy, never a chance, and society getting its deserts.

For a time Seward held Abram Vanderheyden to the stand. He was the deputy sheriff who had known Freeman all his life and had been a kind of Javert in the prisoner's life, pursuing him through the village, arresting him, chastising him, keeping an eye on the vagrant wandering black child who lived about the town, always threatening to become some kind of local juvenile problem. The stolen hens, the theft from the peddler's cart, and then the accusation of the theft of Mrs. Godfrey's horse, Vanderheyden told all.

But somehow, Vanderheyden, out of life association with Freeman, as his pursuer and as one of his final captors, had developed an odd kind of personal feeling for the man. He believed Freeman was sane, but it was thunder in the court when Seward asked him if Bill Freeman had really stolen Mrs. Godfrey's horse.

"Why, he has always denied stealing the horse," the deputy said.

"Do you believe he stole it?"

Vanderheyden looked, with an air of surprise, out over the court. He was supposed to be Van Buren's witness, and he was, but he said, ". . . I never believed he did and I believe that is the general opinion . . . I swore on the last trial that I had no idea that he stole the horse."

CHAPTER THIRTY-EIGHT

Dr. Spencer's "Bump of Ambition"

Seward listened with special curiosity to Dr. Thomas Spencer. Under direct examination by Van Buren, the doctor was telling the court how he had worked out a map of the mental faculties, a theory of mental compartments, *the dissection of the mind.* The Attorney General was giving him an opportunity to try out his great discovery in court.

Although he had heaped contempt on the learning of Seward's medical men and deprecated their right to alter traditional jurisprudence, Van Buren felt that there was a sound strategy in quietly stealing the defense's thunder.

Dr. Brigham, at his seat in the front row of the spectators' benches, wore a startled and interested look, as he listened to Dr. Spencer define the nature of reality and delusion, and the workings of his new method for the exploration of the mind. Lawyer David Wright stared at the witness, and it is possible his mouth was slightly agape, trying to grasp the eruption of definition. The other defense lawyers had a head-to-the-sideways air about them as if they were trying to fathom what was being said.

Judge Whiting leaned forward with a wide-eyed intentness, and the spectators watched in a perplexed silence as Dr. Spencer, a man in his fifties, held the court throughout one whole morning and into the afternoon. He was a bouncey witness, hardly able to sit still in the witness chair, but full of electricity, like one who has found a new idea and is eager to make converts. He had been

a physician and surgeon for thirty years, and he was now teaching medicine in a college in the nearby town of Geneva.

Van Buren very gently asked him what chair he occupied at the college, and he answered, a little pompously, "That of Professor of the Theory and Practice of Medicine, but I have collaterally lectured on Medical Jurisprudence."

As he talked he held in his lap a chart about two feet high and a foot wide, and this was a map of the human mind, neatly ordered in heavy black markings, with labels and arrow marks.

Dr. Spencer's departure from the phrenologists was in this: that whereas the mind experimenters, Gall, Spurzeim and others, had sought to create a system whereby man's nature and behavior and even destiny could be determined by the external appearances, the bumps and contours of the skull, Dr. Spencer went *inside* the skull—and as his table showed, he romped all over the brains.

Remarkably, in spite of great contradictions in Dr. Spencer's testimony, and his blind imperative to find Freeman sane, there was yet a kernel of truth in his table of the mind. Vague, nebulous, groping, it still reflected an effort to rescue the best of the late Dr. Franz Gall's *craniology*. As he began describing his chart to the jurors, he said, "The brain, the little brain, spinal marrow and nerves, are the instruments of media, connecting the mind with material things, and are the seat of the disease called insanity." But from there on, Dr. Spencer's chart and his explanation of it wandered in a cosmos of its own darkness.

Seward suspected that behind this innovationist lay an ordinary phrenologist, one of a variety then arising in the country and bringing uncertainty and confusion into the whole area of genuine *craniology*. He suspected quackery. The medical air was riddled with a new fakery sprung up out of "phrenological science" and reaching its apotheosis with the appearance of the Fowler brothers who had discovered the money-making bumps on the skull, which, if you massaged them, could possibly help increase your fortune.

Seward wasn't sure what kind of break from traditional phrenology Dr. Spencer represented, but he listened critically while the Geneva doctor held his chart so that it faced the jurors.

Dr. Spencer busied himself with the index finger of his right

hand pointing out a route on the cardboard map. Looking over his glasses at the jurors, he told them there were thirty-six powers of the mind whose whereabouts inside the skull he had captured and isolated, and these were described in odd and even numbers on the placard. Arrows making a circuit of the map showed the course of ideas through the mind. The ideas began with the motives originating in the area of the highest odd numbers in the southwest corner of the mind, marked *A*. These went perpendicularly northward, through Thirst and Hunger and Sensation, marked *B*. Then the arrow of ideas turned right and went eastward through Conception to Attention, marked *C*. They then descended southward, through Perception, Memory, Understanding, Comparison, Reason, Invention and Judgment. Here they wheeled to the left under the Will, marked *D*, and passed through conscience, and then to *V*, "the unascertained center of Sensation, Volition and Will."

This, said Dr. Spencer in explanation, was the natural turnpike road for the ideas when we were awake and sane. But there was another road, *X*, *Y* and *Z*, on which ideas, when we were asleep or insane, started off and passed by Conscience to avoid having to pay any toll to that stern gatekeeper.

As he pictured how his system of analyzing the mind worked, the jury and court craned and tried to figure it out. He peppered the air with terms like "the involuntary faculties," "all the faculties are united into one whole," "conscience regulates the will while we are awake," "the insane man when awake makes the same mistake that a sane man does when he is dreaming."

The Attorney General wished to show the court that his expert was also traditionally based, that he had the general understanding of that day in the area of mental disease; so, for a time, he inquired of the professor about the nature of mental disease, and asked him to define terms like "delusion," "hallucination," "reality"—those medical and conceptual figures which had already been much debated.

Dr. Spencer began by confessing that he himself was capable of experiencing delusion. And so he had, he said, even in connection with this case. His first crude and incorrect notions of William Freeman's mental condition had been delusory. He had been rid-

ing on a train, coming here to Auburn from Geneva, and a prominent Auburnian had sat with him and told him Freeman was insane. At first he accepted this view. Then, when he examined the prisoner in his cell, he saw that the colored man was sane. "So I confess my own delusion in respect of this case."

He had not taken the Freeman case lightly. He had seen Freeman eleven times in the lockup, and was in no hurry to reach a conclusion. In order to reach a conclusion that wasn't a delusion you had to search, not easily, "but as if in the deep dark forest, guided only by the track of the wild deer on the path of the savage, to the rich mine of truth that lies concealed in its darkest recesses." And as he motioned at his chart, he took the court on the long trek through the "dark forest."

"——To such rules of reasoning have I confined myself in this most responsible investigation," Spencer went on, assuring the court of his integrity.

The court could ask no more. Especially as, when Van Buren prodded his witness to describe the nature of reality and the nature of delusion, Spencer began by favoring the court with a definition of reality, that Rosetta stone for which philosophy has searched for two thousand years, and which Dr. Spencer said he had found.

His metaphor to describe reality derived from a colloquial reference of the day known as "the Dutchman's horse." The Dutchman had a general description of a stabled horse which summarized man's search for the real:

> *"When he stands up in de stable," the Dutchman said, "his head come first; when de boys plague him mit de pitchfork, his tail come first."*

That would be reality, Dr. Spencer said.

And now for the nature of delusion:

"Hallucinations are false thoughts taken as realities. In dreaming, hallucinations and illusions are always mistaken for the realities of things. For example, if we dream that we see a horse, it is an illusion; if we dream we purchase a horse, it is a hallucination. . . ."

Seward checked with his colleagues. Had they heard as he

had heard, this distinction between illusion and hallucination? They had heard as he had. He jotted that down, and also this, that came an instant later: ". . . The question whether Freeman is insane must be determined by an approximation resembling the approximation in mathematical calculations, where we can never reach a perfect result."

In that way Dr. Spencer's theory rambled on. Perhaps he was trying to get beyond the vague mummery of bumps on the skull, to get inside the dream process in man's brain, and in that way he was actually poking toward an area to be extensively hoed later on.

The doctor reviewed the testimony of many of the witnesses in the light of his viewpoint, and it appeared that Freeman possessed the necessary amounts of the letters *V*, *A*, *B*, *C* and *D*, that is, "The union of all the mental faculties, as if by electric wires, as one whole," to be perfectly sane.

He rolled along like an 1846 railroad. . . .

"Apply these principles to this case and how stands the balance? In saying 'Well, do what's right,' Freeman showed the power of distinguishing between right and wrong. Why go so far out in the country to kill? *Stand a better chance to fight, sorry I killed the child, looks kind o' hard.* There is then the same ideas with respect to pay; the avowal to fight until he died; about the liver; sent to prison wrongfully; ear dropped. *Analysis:* The answers as to the child imply the remains of conscience; that he could stand a better chance to fight away from a thick population, shows the evidence of reason. Moral depravity, not insanity, are inferable so far as these facts go."

The doctor generalized on criminal insanity and melded his observation with Freeman's case. "It comes on slowly—the person is mischievous—cheats a little—swears—lies—steals, then lies again—the symptoms mix up together, and grow worse—he suffers from dreams—restiveness, asleep or awake—sleeplessness—starts journeys nights or Sundays—loiters in bar rooms—meets hale companions—has frightful dreams—has night-walkings, or *voluntary somnambulism.* If at a tavern, he sleeps awake, because conscience pricks, or because he tries to turn day into night—

feigns calmness, especially when planning crimes—carefully arranges time, generally for the night time—place—instrument, and companions, if any; carefully plans an escape; all things are then ready for crime—arson, theft or death. . . ."

He was moving toward Freeman fast now, and he arrived in a bold voice that outranked Van Buren's at his angriest: "THE RESULT AT WHICH I ARRIVED WAS THAT ALL THE FACULTIES OF MIND WERE POSSESSED, IN A DEGREE, RENDERING FREEMAN A RESPONSIBLE BEING."

Seward asked, "If you dream you see a horse is it an illusion?"

Yes, Dr. Spencer answered, the horse was an image then and an illusion when seen in dreaming.

"If you dream you buy a horse is that a hallucination?"

It might be both hallucination and illusion, the professor answered, modifying the statement he made under direct examination; and adding, the image and the abstract idea would be a compound of the two.

Seward nodded his head.

"What faculty moves a horse to open his mouth to take his oats?"

"The will."

"What is it that induces a horse to move when driven?"

"His will, or the will of the driver, both combined."

"Have you ever seen an insane horse?" the lawyer asked.

He had, the professor answered, he had seen an insane horse, also a cow and other animals when affected with hydrophobia.

Actually it was not remarkable that there was both serious discussion and banter about horses. Men and horses had built the country. Horses were property and motive power, as automobiles today. A few years earlier horse-drawn railroads were carrying coaches big enough to hold sixty-four passengers over steel railway lines. Freeman had been accused of stealing one horse and it had changed his life. After his murders he *had* stolen two horses. Horses brought the lawyers to court. Horse talk was as common as talk of one's family.

Even Seward, like some poet with an intuition of the truth,

that the prisoner could be proved deranged, had gone, like winged Pegasus of old—on horseback to the stars.

Dr. Spencer again gave an elaborate explanation of his chart. Seward asked whether the professor thought the table would aid the jury in reaching a conclusion on the prisoner's sanity.

"Whether the jury will profit by it will depend very much upon my success in making it, and upon the fact whether they understand it."

Seward: Is your plan of thirty-six faculties a perfect subdivision of the mind?

Dr. Spencer: I divided the chart with thirty-six, but the chart is not perfect. It is such an analysis as comports with common names. There are others, but I have not been called upon to make out the additional list.

Seward: How many other volitions are there under No. 28, on your map? (On the map, No. 28 carried the words, "Other volitions, mental and moral." Dr. Spencer had left himself one number as a margin for error.)

Dr. Spencer: I don't feel called upon to answer.

Q. What faculty is the "imaginary center" referred to on your map, or what faculty did you describe as such?

A. The imaginary center of all the faculties is the place where they all combine. I did not describe any faculty as the center. I said the center of the whole is united by the hand of Omnipotence.

Seward, in a mock vehemence, asked, "Do you mean to say that the will is not the imaginary center?"

"I mean that all the faculties of the mind are that imaginary center."

"Where do you locate conception?"

"It is a mere hypothesis. It is located in the forepart of the head."

"Is weakness of imagination the evidence of insanity, with you."

"It is one of the evidences."

"Do you suppose there is a center of sensation in the body?"

"I suppose there is. But on my table it is only hypothetical."

"Where do you find the evidence of this distribution of the mind into these various faculties?"

"The evidence is found in our own consciousness that those faculties exist. There are thirty-six in all."

Seward glanced at the prosecution table where Van Buren fingered papers nervously. He stared at the Attorney General and asked, "If the Attorney General should go tonight and steal hens, what would your opinion be of his sanity?" Van Buren had asked dozens of similar hypothetical questions, some bordering on nonsense, of Seward's physicians.

Spencer answered, "Taking his character as I know it, I should say it would be an evidence of insanity."

Suppose Van Buren should rise and fire a gun into this crowd, what state of mind would it indicate?——More insanity in that than to steal hens, Dr. Spencer said.

"Why so, Doctor?"

"Because he would be much more likely to do the latter I should put such an act in one side of my balance——"

"What would you put in the other?"

A pause, then a brave effort, a hesitation, "I cannot get up the symptoms on the other side."

Laughter struck into the dock from all sides, from the audience, the bench, the associate judges.

Dr. Spencer earlier said he had visited hospitals in England and France, and Seward wanted to know what hospital for the insane he had visited in London. The professor responded that it was a large hospital near Charing Cross, on the south side of the Thames, and he just didn't recollect the name of the superintendent.

"How long were you there?"

"A day."

Well, what asylums had he been to in Paris?——Why, a large number of hospitals there, he'd stayed there three months.——Could he name one? He could not now.——Which side of the Seine were they? "Cannot now tell."——Couldn't he name *one* of them? He couldn't, they were charity hospitals.

And so with Edinburgh, he had been to a hospital there but not the one for the insane, and even in America it turned out he had seen only three mental hospitals.

Seward was still handling the chart, and he toyed with it

lightly, casually, as if what he held in his hand was no more than worthless cardboard. The whole court watched the way the lawyer swung the chart about, until Dr. Spencer reached for it and tenderly put it back onto his lap.

The professor had said that the remark about the liver was an ancient expression, and Freeman probably had heard it.

Seward asked, "Who were the ancient people who were accustomed to eat the liver?"

"My recollection does not serve me upon that point. I think I noticed it in the history of Rome; it may be Livy, Maver or Goldsmith."

Q. Did they eat the liver in its raw state, or after the process of cooking?

A. My recollection is quite vague on that point.

Q. Do you think the prisoner has read Livy, Maver or Goldsmith?

A. I rather think he has heard the expression used, but I don't think he ever read those works.

Whatever the merit of the professor as an experimenter with "compartments" in the brain, Seward began a line of questioning intended to smoke out Spencer's faith in the meaning of protuberances on the skull.

Earlier, in direct examination, Spencer had indulged in a fatal metaphor. He had described the limitations of the blind, and said that if the blind were asked what a picture was like, they might perhaps tell you, the sound of a trumpet.

Seward now presented Dr. Spencer with a picture. He held before the professor a large book of illustrations and prose matter, Rees Encyclopedia. Pointing to an open page, he asked, "Doctor, in your opinion, which of these portraits has the most expressive features?"

Dr. Spencer stared at two pictures, both African heads, and he opined, "In one figure the mouth, in the other the eyes are most expressive."

"Then you think there is expression in the mouth?"

The professor answered, "I should think a Negro's mouth and lips were as expressive as his eye, but as a general rule the eye is most expressive."

Seward struck cruelly. "Speaking metaphorically, as you have, has the mind any nose?"

Spencer answered icily, "I have not studied bumpology sufficiently to answer that question."

The lawyer persisted. "Speaking metaphorically, as you have in relation to the eye and ear of the mind, has the mind any mouth?"

The doctor defensively, "I do not know as it has."

Then, this quick exchange:

"Was *Paradise Lost* written under the excitement of hunger or anger?"

"I never supposed either."

"Was the tragedy of *Hamlet?*"

"Have never supposed so."

"Do you consider *Paradise Lost* a coherent work?"

"I do. It is a work of reason combined with imagination and volition."

"How is the tragedy of *Hamlet?*"

"In that there is an imitation of incoherence. I think it is coherent incoherence."

"Was either of them composed under the excitement of joy?"

"They were deliberate, no doubt, although compositions of that character excite the feelings. Poets are, therefore, more frequently found in lunatic asylums than mathematicians. All exciting pursuits are more likely to lead to derangement than others."

The examination was rapid. The whole court knew this was the prosecution's last witness and Seward would be done soon. . . .

"How do poets compare with mathematicians or reasoning men as to their liability to become insane?"

"They are more prone to insanity," the professor ventured.

"Do you know of any poet in this country who was ever confined to a madhouse?"

Dr. Spencer seemed to list for an instant, trying to recollect, "I do not."

Suddenly Seward managed to excite the real and true phrenologist in Dr. Spencer.

He asked, "Do you believe that there are women, besides Victoria who believe they are Queen of England?"

"I do."

"Are such women insane?"

"No one perfectly sane can indulge that delusion. One partially sane, if she had the bump of ambition largely developed, might."

Seward snapped the examination to a close.

The bizarre interchanges between lawyers and witnesses ended, the trial testimony for both sides closed.

PART SIX

Summaries, Charge, Decision

CHAPTER THIRTY-NINE

Seward's Summary: ". . . Before They Charge Me with Freeman's Crimes!"

"For William Freeman, as a murderer, I have no commission to speak," Seward said, opening his summary as soon as court began on the morning of July twenty-second. "If he had silver and gold accumulated with the frugality of Croesus, and should put it all at my feet, I would not stand an hour between him and the avenger. But for the innocent, it is my right, my duty to speak. If this sea of blood was *innocently* shed, then it is my duty to stand beside him until his steps lose their hold upon the scaffold. . . ."

The lawyer's voice had begun softly, but by the time he had reached the end of that expression of resolve, his words carried to the back reaches of the court. The villagers, catching his pause, themselves seemed to halt, for a breath, or a movement in their seats, and then Seward pushed on, saying he pleaded not for a murderer. . . .

"I have no inducement, no motive to do so. I have addressed my fellow-citizens in many various relations, when rewards of wealth and fame awaited me. I have been cheered on other occasions by manifestations of popular approbation and sympathy; and where there was no such encouragement, I had at least the gratitude of him whose cause I defended.

"But I speak now in the hearing of a people who have prejudged the prisoner, and condemned me for pleading in his behalf. He is a convict, a pauper, a Negro, without intellect, sense or emotion. My child, with an affectionate smile, disarms my careworn

face of its frown whenever I cross my threshold. The beggar in the street obliges me to give because he says, 'God bless you,' as I pass. My dog caresses me with fondness if I will but smile on him. My horse recognizes me when I fill his manger. But what reward, what gratitude, what sympathy and affection can I expect here? There the prisoner sits. Look at him. Look at the assemblage around you. Listen to their ill-suppressed censures and their excited fears, and tell me where among my neighbors or my fellow men, where even in his heart, I can expect to find the sentiment, the thought, not to say of reward or acknowledgment, but even of recognition.

"I sat here two weeks during the preliminary trial. I stood here between the prisoner and the jury nine hours, and pleaded for the wretch that he was insane and did not even know he was on trial: and when all was done, the jury thought, at least eleven of them thought, that I had been deceiving them, or was self-deceived. They read signs of intelligence in his idiotic smile, and of cunning and malice in his stolid insensibility. They rendered a verdict that he was sane enough to be tried—a contemptible compromise verdict in a capital case; and then they looked on, with what emotions God and they only know, upon his arraignment. . . . Gentlemen, you may think of this evidence what you please, bring in what verdict you can, but I asseverate before Heaven and you, that, to the best of my knowledge and belief, the prisoner at the bar does not at this moment know why it is that my shadow falls on you instead of his own!"

Seward moved about, a few steps, between his table and the judge's bench. He glanced at notes in his hands, but his mind was full of what he had to say, and his words came on, in his peculiar rasp, but in an extemporaneous flow. He glanced back at the jury. . . .

"I speak with all sincerity and earnestness; not because I expect my opinion to have weight, but I would disarm the injurious impression that I am speaking merely as a lawyer for his client. I am not the prisoner's lawyer. I am indeed a volunteer in his behalf; but Society and Mankind have the deepest interests at stake. I am the lawyer for Society, for Mankind; shocked, beyond the

power of expression, at the scene I have witnessed here of trying a maniac as a malefactor!

"In this, almost the first of such causes I have ever seen, the last I hope that I shall ever see, I wish that I could perform my duty with more effect. If I suffered myself to look at the volumes of testimony through which I have to pass, to remember my entire want of preparation, the pressure of time and my wasted strength and energies, I should despair of acquitting myself as you and all good men will hereafter desire that I should have performed so sacred a duty. But in the cause of humanity we are encouraged to hope for Divine assistance where human powers are weak.

"As you all know, I provided for my way through these trials, neither gold nor silver in my purse, nor scrip; and when I could not think beforehand what I should say, I remembered that it was said to those who had a beneficent commission, that they should take no thought what they should say when brought before the magistrate, for in that same hour it should be given them what they should say, and it should not be they who should speak, but the spirit of their Father speaking in them. . . ."

In that religious spirit, Seward dipped into the merits of the case. The jurors promised, he said, to be impartial, and they would find it more difficult than they had supposed. "Our minds are liable to be swayed by temporary influences, and above all, by the influences of masses around us. At every stage of this trial, your attention has been diverted by the eloquence of the counsel for the people, reminding you of the slaughter of that helpless and innocent family, and of the dangers to which society is exposed by relaxing the rigor of the laws. Indignation against crime, and apprehensions of its recurrence, are elements on which public justice relies for the execution of the law. You must indulge that indignation. You cannot dismiss such apprehensions. You will in common with your fellow citizens deplore the destruction of so many precious lives, and sympathize with mourning relations and friends. Such sentiments cannot be censured when operating upon the community at large, but they are deeply to be deplored when they are manifested in the jury box."

They had been told that a portion of this issue had been tried,

and a verdict rendered that this prisoner was *now* sane. They might be tempted to surrender their own independence and accept the verdict of the preliminary trial—"I warn you that that verdict is a reed which will pierce you through and through!"

He told the court how the jurors for the preliminary trial were selected without peremptory challenge, how some had entered the panel with settled opinions that the prisoner was guilty and sane; it was a verdict founded on such evidence as could be hastily collected in a community where it required moral courage to testify for the accused. He reminded them of the inglorious Fourth, of the intense excitement of the multitude outside the court, and how this spirit of intimidation affected the panel. The preliminary jury "unworthily evaded the question submitted to them, and cast upon the court a responsibility which it had no right to assume, but which it did nevertheless assume, in violation of the law. . . . I trust then that you will dismiss to the contempt of mankind that jury and their verdict, thus equivocating upon Law and Science, Health and Disease, Crime and Innocence."

Seward was sailing now, and he moved out onto the sea of ethnology. . . .

"An inferior standard of intelligence has been set up here as the standard of the Negro race, and a false one as a standard of the Indian. This prisoner traces a divided lineage. On the paternal side his ancestry is lost among the tiger hunters on the Gold Coast of Africa, while his mother constitutes a portion of the small remnant of the Narragansett tribe. Hence it is held that the prisoner's intellect is to be compared with the depreciating standard of the African, and his passions with the violent and ferocious character erroneously imputed to the Aborigines. Indications of manifest derangement, or at least of imbecility, approaching to idiocy, are, therefore, set aside, on the ground that they harmonize with the legitimate but degraded characteristics of the races from which he is descended.

"You, gentlemen, have, or ought to have, lifted up your souls above the bondage of prejudices so narrow and so mean as these. The color of the prisoner's skin, and the form of his features, are not impressed upon the spiritual, immortal mind which works beneath. In spite of human pride, he is still your brother, and mine, in form

and color accepted and approved by his Father, and yours and mine, and bears equally with us the proudest inheritance of our race—the image of our Maker. Hold him then to be a MAN. Exact of him all the responsibilities which should be exacted under like circumstances if he belonged to the Anglo-Saxon race, and make for him all the allowances which, under like circumstances, you would expect for yourselves. . . .

"We labor under the further embarrassment that the plea of insanity is universally suspected. It is the last subterfuge of the guilty, and so is too often abused. But however obnoxious to suspicion this defense is, there have been cases where it was true; and when true it is of all pleas the most perfect and complete defense that can be offered in any human tribunal. Our Saviour forgave his judges because 'they knew not what they did.' The insane man who has committed a crime, knew not what he did. If this being, dyed with human blood, be insane, you and I and even the children of our affections, are not more guiltless than he."

He disposed of the prosecution's charge that Freeman had been directed to feign insanity:

"Is there reason to indulge a suspicion of fraud here? Look at this stupid senseless fool, almost as inanimate as the clay moulded in the brickyard, and say, if you dare, that you are afraid of being deceived by him. Look at me. You all know me. Am I a man to engage in a conspiracy to deceive you, and defraud justice? Look on us all, for although I began the defense of this cause alone, thanks to the generosity, to the magnanimity of an enlightened profession, I come out strong in the assistance of counsel never before attached to me in any relation, but strongly grappled to me now, by these new and endearing ties. Is any one of us a man to be suspected? The testimony is closed. Look through it all. Can suspicion or malice find in it any ground to accuse us of a plot to set up a false and fabricated defense?

"I will give you, gentlemen, a key to every case where insanity has been wrongfully, and yet successfully maintained. Gold, influence, popular favor, popular sympathy, raise that defense and make it impregnable. But you have never seen a poor, worthless, spiritless, degraded Negro like *this*, acquitted wrongfully. The danger lies here. There is not a *white* man or *white* women who would not

have been dismissed long since from the perils of such a prosecution, if it had only been proved that the offender was so ignorant and so brutalized as not to understand that the defense of insanity had been interposed.

"If he feign insanity, who has trained the idiot to perform this highest and most difficult of all intellectual achievements? Is it I? Shakespeare and Cervantes, only, of all mankind, have conceived and perfected a counterfeit of insanity. Is it I? Why is not the imposition exposed, to my discomfiture and the prisoner's ruin? Where was it done? Was it in public, here? Was it in secret, in the jail? His deafened ear could not hear me there, unless I were overheard by other prisoners, by jailers, constables, the sheriff, and a cloud of witnesses. Who has the keys to the jail? Have I? You have had sheriff, jailer and the whole police upon the stand. Could none of these witnesses reveal our plot? . . . When they tell you, or insinuate, gentlemen, that this man has been taught to feign insanity, they discredit themselves, as did the Roman sentinels, who, appointed to guard the sepulchre of our Saviour, said, in excuse of the broken seal, that while they slept men came and rolled away the stone!"

Here Seward likened the case of Freeman to a white man named Kleim, who, two years before, in New York City, had set fire to a house and burned to death a woman and her child. Kleim was insane and he had been acquitted and sent to the Asylum at Utica. Kleim's case had been reported in *The Journal of Insanity* only recently and the charge of Judge Edmonds warned the jurors to disregard the public excitement that attached to Kleim's act. "They must bear in mind that the object of punishment was not vengeance, but reformation; not to extort from a man an atonement for the life which he cannot give, but by the terror of the example, to deter others from the like offenses, and that nothing was so likely to destroy the public confidence in the administration of criminal justice, as the infliction of its pains upon one whom Heaven has already afflicted with the awful malady of insanity."

Seward told the court that the words of Judge Edmonds deserved to be written in letters of gold upon tablets of marble. Their reason and philosophy were apparent. "If you send the lunatic to the gallows, society will be shocked by your inhumanity, and the

advocates for the abolition of capital punishment will find their most effective argument in the fact that a jury of the country, through ignorance or passion, or prejudice, have mistaken a madman for a criminal."

The gentlemen of the jury could not fail to remark the extraordinary similarity between the case of Kleim, Seward said, and that of the prisoner at the bar. The proof of insanity in Freeman's case was of the same nature, and the disease in the same form as in the case of Kleim, except that the evidence in Freeman's case was a thousand times more conclusive. But there were differences! Kleim was white, Freeman a Negro; Kleim's victims unknown, while Freeman destroyed a family rich, powerful, honored, respected.

The large city of New York went ahead with its work while Kleim was tried but "here a panic has paralyzed humanity. No man or woman feels safe until the maniac shall be extirpated from the face of the earth. . . . Freeman is already condemned by the tribunal of public opinion, and has reluctant and timorous witnesses, counsel laboring under embarrassments plainly to be seen, and a jury whose impartiality is yet to be proved."

He attacked the "wild beast" theory of insanity by which his client was prosecuted: "Insanity such as the counsel for the people would tolerate never did and never will exist. They bring its definition from Coke, Blackstone and Hale, and it requires that by reason either of natural infirmity or of disease, the wretched subject shall be unable to count twenty, shall not know his father or mother, and shall have no more reason or thought than a brute beast.

"According to the testimony of Dr. Spencer, and the claim of the Attorney General, an individual is not insane if you find any traces or glimmerings of the several faculties of the human mind, or of the more important ones. . . . All of Dr. Spencer's questions to the accused show, that in looking for insanity, he demands an entire obliteration of all conception, attention, imagination, association, memory, understanding and reason, and everything else. *There never was an idiot so low,* never a diseased man so demented.

"You might as well expect to find a man born without eyes, ears, nose, mouth, hands and feet, or deprived of them all by disease, and yet surviving, as to find such an idiot or lunatic, as the counsel for the people would hold irresponsible. The reason is, that

the human mind is not capable, while life remains, of such complete obliteration. What is the human mind? It is immaterial, spiritual, immortal; an emanation of the divine intelligence, and if the frame in which it dwells had preserved its just and natural proportions, and perfect adaptation, it would be a pure and heavenly existence. But that frame is marred and disordered in its best estate. The spirit has communication with the world without, and acquires imperfect knowledge only through the half-opened gates of the senses. . . ."

Then he asked, in language then reserved for exalted moments in the English tongue:

"Doth not the idiot eat? Doth not the idiot drink? Doth not the idiot know his father and his mother? He does all this because he is a man. Doth he not smile and weep, and think you he smiles and weeps for nothing? He smiles and weeps because he is moved by human joys and sorrows, and exercises his reason, however imperfectly. Hath not the idiot anger, rage, revenge? Take from him his food, and he will stamp his feet and throw his chains in your face. Think you he doth this for nothing? He does it all because he is a man, and because, however imperfectly, he exercises his reason.

"The lunatic does all this, and, if not quite demented, all things else that man, in the highest pride of intellect, does or can do. He only does them in a different way. You may pass laws for his government. Will he conform? Can he conform? What cares he for your laws? He will not even plead; he cannot plead his disease in excuse. You must interpose the plea for him, and if you allow it, he, when redeemed from his mental bondage, will plead for you when he returns to your Judge and his. If you deny this plea, he goes all the sooner (by death), freed from imperfection, and with energies restored, into the presence of that Judge. You must meet him there, and then, no longer bewildered, stricken and dumb, he will have become as perfect, clear and bright, as those who reviled him in his degradation and triumphed in his ruin."

Swiftly, Seward enlightened the court on the nature of the disease under exploration:

"And now what is Insanity? Many learned men have defined it for us, but I prefer to convey my idea of it in the simplest manner. Insanity is a disease of the body, and I doubt not of the brain.

The world is astonished to find it so. They thought for almost six thousand years, that it was an affection of the mind only! Is it strange that the discovery should have been so late? In these recent years? You know that it is easier to move a burthen upon two smooth rails on a level surface than over the rugged ground. It has taken almost six thousand years to learn that. But moralists argue that insanity shall not be admitted as a physical disease, because it would tend to exempt the sufferer from responsibility, and because it would expose society to danger. But who shall know, better than the Almighty, the ways of human safety, and the bonds of human responsibility?

"And is it strange that the brain should be diseased? What organ, member, bone, muscle, sinew, vessel or nerve, is not subject to disease? What is physical man but a frail, perishing body, that begins to decay as soon as it begins to exist? What is there of animal existence here on earth exempt from disease and decay? Nothing. The world is full of disease, and that is the great agent of change, renovation and health.

"And what wrong or error can there be in supposing that the mind may be so affected by disease of the body as to relieve man from responsibility? You will answer, it would not be safe. But who has assured you of safety? Is not the way of life through dangers lurking on every side, and though you escape ten thousand perils, must you not fall at last? Human life is not safe, or intended to be safe, against the elements. Neither is it safe or intended to be safe against the moral elements of man's nature. It is not safe against pestilence, or against war, against the thunderbolt of Heaven, or against the blow of the maniac. You can guard against war if you cultivate peace. You can guard against the lightning if you will learn the laws of electricity, and raise the protecting rod.

". . . You will be safe against the maniac if you will watch the causes of madness, and remove them! Yet after all there will be danger enough from all these causes, to remind you that on earth you are not immortal!"

True eloquence flourishes in a time when thought and idea are themselves eloquent, and men like Seward had a cause and an idea to work with: man's inhumanity to man, the downfall and destruction of slavery, the unleashing of emancipation. Their thoughts and

their hearts caught fire from such flames as these, so that when Seward summed up, he summed up the advances of the age until that moment. His words were more than words: they were concepts, values, ways of feeling. The antislavery sentiment, the respect for science, bred a feeling of righteousness among some men, and that feeling gave blossom to other attitudes: fidelity, honor, even love of man for man. It was a different time than today. It was a century before the fast buck became the conscience of the nation. In that day there were here and there, of course, Midases and the faint outlines of God Mammon were already present, but most Americans lived by values of the heart, not the value of price and profit. And a value that was first of the humanities gave rise to a language that reflected its spirit.

Inspired now by the feeling that he had full control over all his ideas and materials, Seward drove on, a bit hoarsely . . . on the nature of insanity:

"It is contended here that the prisoner is not deranged because he has performed his daily task in the State Prison, and his occasional labor afterwards; because he grinds his knives, fits his weapons, and handles the file, the axe, and the saw, as he was instructed, and as he was wont to do.

"Now the Lunatic Asylum at Utica has not an idle person in it, except the victims of absolute and incurable dementia, the last and worst stage of all insanity. Lunatics are almost the busiest people in the world. They have their prototypes only in children. One lunatic will make a garden, another drive the plough, another gather flowers. One writes poetry, another essays. They do all things that sane men do, but do them in some peculiar way. It is said, however, that the prisoner has hatreds and anger, that he has remembered his wrongs, and nursed and cherished revenge; wherefore he cannot be insane. Cowper, a moralist, who had tasted the bitter cup of insanity, reasoned otherwise:

> "But violence can never longer sleep,
> Than Human Passions please. In every heart
> Are sown the sparks that kindle fiery war;
> Occasion needs but fan them and they blaze,
> The seeds of murder in the breast of man."

For the next two hours Seward reviewed the testimony of the witnesses, passing from one aspect to another: the question whether the prisoner had undergone change, the matter of his possible hereditary predisposition to insanity, the neglect of his education —"for all writers agree, what it needs not writers to teach, that neglect of education is a fruitful cause of crime, and it equally produces insanity."

Freeman had been whipped in childhood by Lynch, Wellington, the police, and in prison. "Such a life, so filled with neglect, injustice and severity, with anxiety, pain, disappointment, solicitude and grief, would have its fitting conclusion in a madhouse. If it be true, as the wisest of inspired writers hath said, 'Verily, oppression maketh a wise man mad,' what may we not expect it to do with a foolish, ignorant, illiterate man! . . ."

How else but on the score of a demented mind could it be explained that he was without human curiosity? "The oyster, shut up within its limestone walls, is as inquisitive as he." How else explain that he who had once been able to tell a story in a continuous narrative, had lost that faculty and now talked in the easiest forms: yes, no, don't know?

And as to the words Freeman said Van Nest had used, about the liver, "An expression so absurd under the circumstances, could never have been made by the victim. How otherwise can it be explained than as the vagary of a mind shattered and crazed?"

In spite of the fact that Seward had taken his departures from the great founders of mental hygiene, Pinel, Esquirol, Prichard, and others, whose books still rested on the defense table, he did not quote from them. He referred to only one authority, the American, Dr. Isaac Ray, then teaching in an Eastern college, whose book, *Medical Jurisprudence of Insanity*, had appeared seven years earlier. Ray had produced a profoundly scientific work, in wide use even today in American courts, and it was this American that Seward from time to time quoted, to illustrate a point.

Seward referred to Ray's discussion of the differences between the homicidal maniac and the responsible criminal, and how Ray's picture of homicidal mania applied to Freeman.

"The homicidal monomaniac," wrote Dr. Ray "after gratify-

ing his bloody desires, testifies neither to remorse, nor to repentance, nor to satisfaction, and if judicially condemned, perhaps acknowledges the justice of the sentence. The criminal either denies or confesses his guilt; the criminal never sheds more blood than is necessary for the attainment of his object; the homicidal monomaniac often sacrifices all within his reach to the cravings of this murderous propensity. The criminal often has accomplices, and always vicious associates; the homicidal monomaniac has neither . . ." all of which, Seward showed, applied to the man at the bar.

He dealt with the reproaches of the people's counsel against the villagers who had had Freeman as a boy and not sent him to school:

". . . But these reproaches are all unjust. How could the mother, poor degraded Negro woman and Indian as she was, send her child to school? And where was the school to which Warden and Lynch should have sent him? There *was* no school for him! His few and wretched years date back to the beginning of my acquaintance here, and during all that time, with unimportant exceptions, there has been no school here for children of his caste. A school for colored children was never established here, and all the common schools were closed against them. Money would always procure instruction for my children, and relieve me from the responsibility. But the colored children, who have from time to time been confined to my charge, have been cast upon my own care for education. When I sent them to school with my own children, they were sent back to me with a message that they must be withdrawn, because they were black, or the school would cease. . . . Here are the fruits of this unmanly and criminal prejudice."

He had proposed, he told the jurors, at the close of the testimony, that they be allowed to examine the prisoner, but that offer was rejected. Had they talked with him themselves, they would have been able to hear his slow modulation and low tone, his indistinct and his monotonous utterance, the utterance, in fact of an idiot.

He referred to Freeman's sentence for the theft of Mrs. Godfrey's horse as "the first act in the awful tragedy of which he is the hero."

He traced Freeman's experiences in prison, ending with his refusal to accept two dollars as payment for five years of imprisonment, on the day he was discharged from prison. Freeman had been asked to sign a receipt for the two dollars and he refused, saying, "I ain't going to settle so."

Then the keepers, the clerk, and even the Reverend Chaplain laughed at the simplicity and the absurdity of the claim of the discharged convict who repeated, "*I've worked five years for the State, and ain't going to settle so!*"

"Had they been wise," Seward said, "they would have known that 'So foul a sky clears not without a storm.'

"The peals of their laughter were the warning voice of nature, for the safety of the family of Van Nest."

So closed the second act of the sad drama, Seward said, and there was the third, when Freeman called at his own office, a week or ten days before the murders, and asked for a warrant for those who had falsely imprisoned him; and Freeman went elsewhere, and he was turned down everywhere.

"Then it was that the one idea completely overthrew what remained of mind, conscience and reason."

Seward battered the testimony of the prosecution doctors, saving his principal fire for the people's most important medical witness, Spencer, and of him, said, "Dr. Spencer brings up the rear of the people's witnesses. I complain of his testimony, that it was covered by a masked battery. The District Attorney opened the case with denunciations of scientific men, said that too much learning made men mad, and warned you therefore against the educated men who might testify for the prisoner. I thought at the time these were extraordinary opinions. I had read:

> "A little learning is a dangerous thing,
> Drink deep or taste not the Pierian Spring;
> These shallow drafts intoxicate the brain,
> But drinking largely sobers us again."

Yet all these denunciations against learning had been but a cover up for Dr. Spencer, "who heralds himself as accustomed to teach, and informs us that he has visited the principal hospitals for the insane in London, Paris and other European capitals."

Seward then lampooned the map of mental faculties that Spencer had prepared and he held it up for the jurors again to see. He contrasted the lone authority and theorist brought in by the prosecution with the list of expert medical men in his own camp. He denounced the action of the Attorney General in having denied two of the defense physicians admittance to Freeman's cell, and he blamed the court for participating in this trickery. "I pray God that these Judges may never experience the consequences which must follow such an adjudication.

". . . But there is proof, gentlemen, stronger than all this. It is silent, yet speaking. It is that idiotic smile which plays continually on the face of the maniac. It took its seat there while he was in State Prison. In his solitary cell, under the pressure of his severe tasks and trials in the workshop, and during the solemnities of public worship in the chapel, it appealed, although in vain, to his taskmasters and his teachers. It is a smile never rising into laughter, without motive or cause—the smile of vacuity. His mother saw it when he came out of prison, and it broke her heart. John De Puy saw it and knew his brother-in-law was demented. . . . He laughs perpetually here. He laughs while I am pleading his griefs. He laughs when the Attorney General's bolts would seem to rive his heart. He will laugh when you declare him guilty. When the Judge shall proceed to the last fatal ceremony, and demand what he has to say why the sentence of the law shall not be pronounced upon him, he will even then look up to the face of the court and laugh, from the irresistible emotions of a shattered mind, delighted and lost in the confused memory of absurd and ridiculous associations. Follow him to the scaffold. The executioner cannot disturb the calm of the idiot. He will laugh in the agony of death.

"Do you know the significance of this strange and unnatural risibility? It is proof that God does not forsake even the poor wretch whom we pity or despise. There are, in every human memory, a well of joys and a fountain of sorrows. Disease opens wide the one, and seals up the other forever. . . . That chaotic smile is the external derangement which signifies that the strings of the harp are disordered and broken, the superficial mark which God has set upon the tabernacle, to signify its immortal tenant is dis-

turbed by a Divine and mysterious commandment. If you cannot see it, take heed that the obstruction of your vision be not produced by the mote in your own eye, which you are commanded to remove before you consider the beam in your brother's eye. Beware how you misinterpret the handwriting of the Almighty."

It was late in the afternoon, Seward was tired. His voice, never loud, could no longer be heard halfway down the length of the court, and yet the spectators in the rear stayed on, to see Seward even though they could not make out what he was saying, save an occasional word, a phonetic phrase, or an emphatic clause that did reach across the rows. A line of beard had appeared on his face, and there was moisture on his forehead; his gestures of hand and arm had settled into a rhythmic slowness, and his clothes looked wilted upon him. Yet his inner vigor was unmoved and unmoving, he bore doggedly on, and he narrowed his address down, now, to the certainty that the jury primarily hear him. He stayed close to the jurors, and he looked by turn into the face of each man.

Seward denounced the Attorney General for the way he had insulted Freeman's mother:

"She is nevertheless a woman and a mother, and nature bears witness in every climate and every country as to the singleness and uniformity of those characters. I have known and proved them in the hovel of the slave and in the wigwam of the Chippewa. But Sally Freeman has been intemperate. The white man enslaved her ancestors of the one race, exiled and destroyed those of the other, and debased them all by corrupting their natural and healthful appetites. She comes honestly by her only vice. Yet when she comes here to testify for a life that is dearer to her than her own, to say she knows her own son, the white man"—he looked at Van Buren sharply—"says she is a drunkard! May Heaven forgive the white man for adding this last, this cruel injury to the wrongs of such a mother!"

Seward took a few steps toward the Attorney General. There was a look beyond professional feeling in his face, perhaps a tinge of outrage or bitterness, or even of incomprehensibility. He stared straight into the eyes of the prosecutor for a moment, and then turned to the jurists:

"The learned gentlemen who conduct this prosecution have attempted to show that the prisoner attended the trial of Henry Wyatt, whom I defended against an indictment for murder, in this court, in February last; that he listened to me on that occasion, in regard to the impunity of crime, and that he went out a ripe and complete scholar. So far as these reflections affect me alone, they are unworthy of an answer. I pleaded for Wyatt then, as it was my right and my duty to do. *Let the counsel for the people prove the words I spoke, before they charge me with Freeman's crimes!*

"I am not unwilling that any words I ever spoke in any responsible relation, should be remembered. Since they will not recall those words, I will do so for them. They were words like those I speak now, demanding cautious and impartial justice; words appealing to the reason, to the consciences, to the humanity of my fellow men; words calculated to make mankind know and love each other better!"

Seward was finishing. He glanced at the spectators and he spoke of the fact that there was nobody in the courtroom, no brother, sister, or friend to behold Freeman. His mother "cannot bear to look upon him." Popular rage against the accused had driven them away, and scattered his kindred and his people, but on the other side, as he looked over the court, he noticed the aged and venerable parents of the Van Nests, and John Van Nest's surviving children, Julia and Peter Van Nest, "and all around are mourning and sympathising friends.

"I know not at whose instance they have come. I dare not say they ought not to be here. But I must say to you that we live in a Christian and not in a Savage State, and that the affliction which has fallen upon these mourners and us, was sent to teach them and us mercy and not retaliation!"

He caught a breath—he had spoken for seven hours. He took a drink of water, and he moved into his last remarks:

"I have been long. I remember that it is the harvest moon, and that every hour is precious while you are detained from your yellow fields. But if you shall have bestowed patient attention throughout this deeply interesting investigation, and shall in the end have discharged your duties in the fear of God and the love of truth justly and independently, you will have laid up a store of blessed recollections for all your future days, imperishable and inexhaustible. . . .

"In due time, gentlemen of the jury, when I shall have paid the debt of Nature, my remains will rest here in your midst, with those of my kindred and neighbors.

"It is very possible they may be unhonored, neglected, spurned! But, perhaps, years hence, when the passion and excitement which now agitate this community shall have passed away, some wandering stranger, some lone exile, some Indian, some Negro, may erect over them an humble stone and thereon this epitaph: *He Was Faithful.*"

CHAPTER FORTY

Van Buren's Summary: ". . . From the Theories Broached on Wyatt's Trial!"

It was July twenty-third, the last day of the trial. Van Buren was summarizing.

For two weeks the nerves of the village had been scraped by the court proceedings. For a half year the village had been unsettled. The juridical toll had mounted; two trials for Wyatt, two for Freeman—and nobody could imagine what might follow. . . .

Van Buren, dressed in a dark blue serge suit, wearing a conservative tie, gold rings on two fingers of his right hand, his shoes sharply shined, his whole appearance sartorial and confident, began his address to the jury. Privately he had been feted at the homes of leading villagers. Everywhere he was a favorite, and if he took a short walk on Genesee Street, the townsmen stopped and gathered in groups of three, four and five to say, "There goes the young fox, like his dad, he'll protect us from these killers." With such support as this Van Buren opened up to the jury, with a bouquet to Seward—not that it wasn't filled with thorns.

"The learned gentleman who has just addressed you," he said, "has not only brought to the task his usually great ability, but throughout the trial, as well as in his closing argument, has seemed to believe, and I fear has impressed the jury with the belief that his own character and position, rather than those of the prisoner, are involved in your decision."

With a sweeping gesture of his ringed hand he begged the jury to dismiss any such idea, because—"That distinguished citizen has

spent the larger portion of his life among you; he is your neighbor and friend; and if he were upon trial, it would better become a stranger like me, and be more agreeable to my inclinations, to enter a *nolle prosequi,* than press for a conviction."

He continued his flattery of the quondam Governor, while moving in on Freeman:

"It is a gratifying feature in our institutions, that an ignorant and degraded criminal like the prisoner, who has spent a large portion of his life in prison; vicious and intemperate in his habits; of a race socially and politically debased; having confessedly slaughtered a husband, wife, son and mother-in-law, composing one of the first families in the State; and arrested with but one cent in his pocket, can enlist in his defense the most eminent counsel in the country, bring upon the witness stand professors of the highest distinction in their departments of science, members and trustees of churches, and even pious divines."

Van Buren could be heard clearly throughout the room. His voice had a singer's control and a resonant largeness, and as he talked, he could look at the jury, and, like a man with three eyes, also watch the judges and the spectators.

It was gratifying, he said, to those whose official duty required them to take part in this prosecution, because it assured them that there was no danger that the slightest injustice could be done to the prisoner from any inability to secure friends and testimony at any distance or at any cost. It was gratifying that the defense had been able to select a jury under circumstances that so clearly forbade the idea that his rights were endangered by passion or prejudice.

Point by point Van Buren intended answering the claims of Seward, and in particular to dispose of the assertion that the village was in hysteria. "Everything indicated that a calm and dispassionate examination would be given to a case which had once deeply and naturally excited the community; that the strong public sympathy which always turns its back upon the dead and its face toward the living, and the sturdy independence which stands by the weak and helps the helpless, had attracted to the prisoner and enlisted in his cause an unsurpassed combination of kind feeling, rare intellect, extensive learning, and vast acquirements."

There was, said Van Buren, with a shake of his neck, as if he had swallowed some extra hard rye, something so repulsive in the idea of trying an insane man—so horrid was it to contemplate the possibility of holding a man responsible for the commission of an act which he could not understand or avert—that he had gladly availed himself of the request of Mr. Seward to visit the prisoner with him even before the preliminary trial, so that the Attorney General would be satisfied with the propriety of his own course. They had gone to the cell together.

"I did so," he said, "with the hope of feeling authorized to postpone this trial; and in a short intercourse, I became perfectly convinced that at the time the prisoner at the bar was SANE."

Moreover, nothing in the course of this trial had in any degree weakened his conviction of the prisoner's sanity. And the testimony showed that he was sane on the twelfth of March when he committed the murders. He then launched out, quite as eloquently as had Seward at any time in his summary:

"The extraordinary doctrines put forth upon the subject of insanity in the course of this trial; the wonderful effort made to procure the acquittal of this prisoner; the extreme length to which the proceedings have been protracted—all conspire to excite the public mind, and to render the result to which you shall come, a matter of immense moment. The defense of insanity differs from all others in this—that the declarations and acts of the prisoner constitute this defense. In every other criminal case they are not even admissible in evidence. And the peculiarity of this case is, that the testimony on which insanity is predicated, so far as it comes from scientific or credible witnesses, consists of the acts and declarations of the prisoner *after* the first Monday of June last, long after he had been arrested for this crime and had interposed the defense of insanity!"

The Attorney General shot a look at the defense table and at the visiting medical men in the front rows; his voice lifted:

"I deny and resist the theory of the professors, who have made insanity their peculiar study, that an ordinary man can't comprehend it—a theory which substitutes the testimony of a physician, as to legal responsibility, for the law of the land—expels the judge from the bench! the jury from the box! overturns the government!

and places the Property, Liberty and Life of any citizen in the hands of the trustees and superintendents of Lunatic Asylums!"

He stared straight at Dr. Brigham, held the index finger of his right hand in a faint pose of restrained authority, and then returned his glance to the jurors.

These scientists were out to take law and authority away from juries, he told the twelve men. "The jury thus see the infinite extent to which a surrender of their individual judgments might lead, and the absolute control of Property, Liberty and Life, that might thus be transferred to men of scientific pursuits. The security of all these great interests rests on the trial by jury, and our institutions are founded on the capacity of jurors to determine intelligently every question presented to them."

It may have been a much more astute approach to the jury than Seward's, for the defense lawyer had charged these jurymen with not yet having proved their freedom from bias.

The Attorney General worked that thought up to a heat: "Criminal irresponsibility is a question of law, not of medicine! Were it otherwise—did the detection of offenders or the prevention of crime depend upon medical skill—our police should be composed of physicians and nurses!" The spectators laughed heartily, and the prosecutor took a drink and continued. . . .

"The moral insanity which is induced by a predominance of the passions, and which irresistibly impels to the commission of crime, such as pyromania, kleptomania, erotomania, nymphomania, homicidal monomania, must be detected *by the tongue and the pulse.* Our families cannot walk the streets in safety till they have been swept by a squadron of *doctors!*—and if the punishment of crime is to be determined by medical rules, the professors should sit upon the bench"—he pointed to Judge Whiting—"and fill the jury box!" He motioned to the jurors. Once more the spectators got some lightness out of the tragedy.

Van Buren was so successful with this irony that he continued it. "The prosecution is unsuitably conducted. Governor Silas Wright should have sent the Surgeon General instead of the Attorney General to assist at this trial——"

He slid away from that tone, and said that of course the law allowed no such absurdities. And now, after clergymen have testified

Freeman had no moral sense, that he was not morally responsible; and after lawyers have sworn to Freeman's senselessness, *let us turn to the LAW.*

"Who may and who may not kill, it concerned society to have decided as far back as the time of Cain and Abel; and while we concede that vast improvement has been made in the treatment of the insane, a reference to the simple and early tests of legal irresponsibility under which well-ordered communities have existed to this time, will show that no other has ever been furnished by the successive wisdom of ages or the humanizing spirit which has waited on this wisdom and pervaded criminal legislation."

He asked: "What is the unsoundness of mind and memory which renders the subject of it incompetent and irresponsible? IT IS AN INCAPACITY TO DISTINGUISH BETWEEN RIGHT AND WRONG IN REGARD TO THE PARTICULAR ACT COMMITTED, OR AN INABILITY FROM DISEASE TO RESIST THE COMMISSION OF THE ACT."

This, he said, was the earliest—and the latest—definition of insanity, in the legal understanding of the term.

(That definition remains the law of the land a hundred years later, in most states, with no substantial change.)

Rather angrily, Van Buren said, "Let's advert to the authorities —not to Esquirol, Prichard, Ray, Pinel; but to Coke, Hale, Blackstone, Kenyon, Denman, Maule, Tyndall, Verplanck, and to other luminaries of the law."

For an hour the prosecutor discussed decisions of the British jurists in comparable cases. He reached finally the case of Daniel McNaughton, acquitted in England for murder three years earlier on grounds of insanity, after he slew Edward Drummond, the private secretary of Sir Robert Peel. McNaughton thought he was killing Sir Robert Peel at the time. He was tried for murder, found insane and sent to a lunatic asylum. The case attracted great attention in England; there was widespread criticism of the plea of "partial insanity" that had been entered in that case; the issue was discussed in the House of Lords, and as a consequence of the dispute a set of rules were formulated for the judgment of insanity. These rules, formed in 1843, were drawn upon by Van Buren; and they remain the legal test for insanity to this hour.

The Attorney General pointed to a pile of fifteen books on *his*

table. They were law books of the authorities *he* had cited. *There* were the books that this jury must pay heed to, he said, and the simple question for them to decide was, *had the prisoner, when he killed John G. Van Nest, sufficient capacity to judge* whether it was right or wrong so to do?

He came close to the jurors and he told them that they were not called upon to determine the extent of Freeman's education or knowledge. It didn't matter what the prisoner thought about religion, morality or law. He could reject the existence of a Supreme Being, reject Revelation, believe the Son of God was a Man; he could believe he was cheated or oppressed, and wage war on society, and kill the first man he met, but *if he knew what he was doing, he was no less amenable to punishment.*

Seward had rested some of his case in the hands of God and His sense of judgment, and now Van Buren went to the same Authority. "It is not accomplishment, refinement, morality or religion, but accountability that the law regards. The Supreme Ruler of the Universe holds to the same rule. Neglected opportunities, willful ignorance, deadened moral sense, and inveterate depravity will avail as little Hereafter as here, in saving sinners from responsibility. The only inquiry God would make in the Hereafter was: HAD THEY CAPACITY TO KNOW THE RIGHT, AND PHYSICAL ABILITY TO PURSUE IT?"

In effect, Van Buren said, the Lord would follow the McNaughton rules.

Adopting an air of great liberality, Van Buren said that frankly he could not say what motive the prisoner had in committing these murders. Though the testimony might lead one to think Freeman was spurred by revenge, you wouldn't in a case of life and death be willing so to find, he said.

"Shakespeare, who knew the human heart as well as if he'd made it, paints a money-lending Jew, who, indignant at the insults and oppressions practiced on his caste, prefers the taking of human life to the repayment of three thousand ducats. Shylock when asked if he will take the pound of flesh, and what that's good for, says:

> "You'll ask me, why I rather choose to have
> A weight of carrion flesh, than to receive

Three thousand ducats: I'll not answer that:
But say it is my humor; Is it answered?
What if my house be troubled with a rat,
And I be pleased to give ten thousand ducats
To have it banned. What, are you answered yet?
Some men there are, love not a gaping pig;
Some, that are mad if they behold a cat;
. . . . Now for your answer:
As there is no firm reason to be render'd
Why he cannot abide a gaping pig;
Why he a harmless, necessary cat;
. . . . So can I give no reason, nor I will not;
More than a lodg'd hate, and a certain loathing
I bear Antonio, that I follow thus
A losing suit against him. Are you answer'd?"

In that humor Freeman had moved, because it suited him, "a lodged hate" and a certain loathing he bore the Van Nests; perhaps revenge, perhaps plunder, a cat he did not like, a gaping pig—even though he pursue a losing suit.

Said Van Buren, "It is of no earthly consequence, except to satisfy an idle curiosity, what his motive was."

Was the court answered?

Motive? "No adequate motive, of course, existed, but Freeman had his reasons for slaughtering the Van Nests."

He mentioned another criminal case, that of Henry Green, the young bridegroom who had poisoned his wife on her honeymoon, and later confessed that he intended marrying another woman of small property and no attractions.

And the prosecutor made this point, motive or no motive: "When such demons exist, how idle is it for a man of ordinary honesty or humanity to hunt after the motive of a criminal?"

Van Buren went on, "It is not given to a man to search the heart. Let that investigation be transferred to a tribunal before which this prisoner must shortly appear! The illegal act being proved, THE LAW DECLARES THE MOTIVE! THAT MOTIVE IS MALICE —A WICKED, DEPRAVED HEART!"

The Attorney General plunged into the testimony of the scores of witnesses. He tore at their words as a baker kneads dough to puff up his bread, with his fists and his elbows.

He praised Dr. Brigham's learning and then, speaking heatedly,

so that the spectators could see his tongue, he railed at the physician: ". . . The acquaintance I have enjoyed with him for years might almost give me the right to claim him as a personal friend. But you and I see perfectly the difficulty with him as a witness on the stand. He is as utterly ignorant of law as he is familiar with medicine. . . . His only inquiry is, to which class of insane persons he shall assign the prisoner. . . . He is filled with vagaries of the insane—ignorant almost of the habits of the sane. . . . His memory is treacherous!

"Dr. Brigham does not seem to have the remotest idea of the frightful jeopardy in which his notions and his evidence place the Property and Life of the citizens. And when I look at his artless countenance and hear the mild, amiable and gentle tones of his voice, while he is innocently dealing with doctrines that may convulse society to its center, he reminds me more of a child playing with lightning, than a scholar and a philanthropist bringing the light of science to aid the investigation and the establishment of truth!"

Van Buren examined the testimony of the same witnesses whose words had convinced Dr. Brigham that Freeman was insane, but in the Attorney General's handling, the same testimony showed sanity, deliberation, malice, depravity. He disposed of the constant smile on Freeman's face, the smile that rested on the Attorney General at that moment:

"Smile and smile and be a villain."

For two hours Van Buren analyzed Dr. Brigham's testimony until it may have seemed to the jurors that he had shredded it. He discounted the idea of a change taking place in Freeman in jail, he quoted and praised some witnesses, discredited others, poked fun at the phrenologists who had examined the external appearance of the prisoner in court, and judged him insane by his appearance alone.

Then suddenly, forgetting, or bypassing all he had said about the ignorance of scientists, and the vagaries of medical men, Van Buren quoted the great Jean Esquirol against Seward and the prisoner!

He read to the court a passage from Esquirol, describing the physical symptoms of dementia, which, Dr. Brigham said, Free-

man had. And he did find in Esquirol a whole passage of symptoms, none of which applied to Freeman. Freeman lacked grotesque and unnatural movements, which Esquirol had ascribed to demented patients, and, having shown the court that Freeman did not answer to this description, he triumphantly asked, "Now, has Freeman one of these symptoms, intellectual or physical? Has he not sat here *four* weeks without a single grotesque or unnatural movement? Did you ever see a sharper, brighter eye, or one more fixed and resolute? Ever hear him for an instant appear to be talking to himself?"

The spectators loved this. Whatever Freeman's insanity, it had not answered the full description of dementia by Esquirol. A murmur moved from the benches up to the dock.

But the Attorney General didn't stop there. He had boned heavily through all the books on the defense's table, and like a juggler, he tossed, with apparent ease, all of the medical authorities of the time to and fro, forward and back, up and down, with and against each other, *the same* men he had denounced as having no right to have a voice in legal matters . . . Ray, Prichard, Pinel, Taylor. He quoted them against the physical manifestations of Freeman, and he found contradictions.

Medical science in respect of mental hygiene was groping in that time; there was variance among the research men; they had different ideas; often their researches resulted in contraposed conclusions: and Van Buren had unearthed the vagaries of the knowledge of mental disease at that time.

He took Seward's principal medical authority, Dr. Isaac Ray, and he turned this expert against Freeman in a remarkable way, through one of Dr. Ray's observations that the deeds of the criminally insane must be sharply distinguished from "the sanguinary atrocities of the sane."

Dr. Ray spoke of the Neros and Caligulas of history, saying, "For such, we have no disposition to urge the plea of insanity, for though we are willing to believe them unhappily constituted, we have no evidence that they labored under cerebral disease, and they certainly exhibited none of its phenomena. Motives the very slightest, no doubt generally existed for even their most horrid atrocities and even when they were entirely wanting, there was still a conformity of their bloody deeds with the whole tenor of their natural characters."

This general passage Attorney General Van Buren hurled at the jurors and at the defense, and he pointed at Freeman smiling in his seat. "I have thus called your attention to the various kinds of insanity, and endeavored to show you that this prisoner has none of them!"

He had built as powerful a case for the people as any attorney might, and now he descended upon Seward personally, as the true culprit in this case, as the man responsible for instigating the murders of the Van Nest family. Freeman was merely the puppet and product of Seward's irresponsible desire to coquette with dangerous experiments. . . .

"Doctrines have been advanced by counsel and witnesses in the course of this trial, dangerous to the peace of society and fatal to good government. The laws and institutions under which we live have been assailed. The maxims of law which have emanated from the wisest and most humane jurists that ever lived—maxims on which the security of Liberty, Property and Life have reposed for ages; which the successive wisdom of centuries has confirmed, and under which the safety of prisoners, as well as of society, has been protected—are now openly derided and defied.

"This generation is claimed to be wiser in the elementary principles of law than all that have preceded it. The representatives of medical science on the witness stand, override and swear down, not only the laws of the land, but the most profound and accomplished treatises on medical science itself! They seek not only to expel the judge from the bench and the jury from the box, but would banish common sense and the highest scientific attainments alike from this court!"

His voice had been high, but he lowered it momentarily as he began speaking of the murder committed last winter by Henry Wyatt in Auburn Prison.

". . . On Wyatt's first trial, the prisoner at the bar was present and he seemed to be an attentive listener. He is undoubtedly hard of hearing, but witnesses swear they think Freeman heard the testimony during this trial. Dr. Bigelow thinks Freeman knows what is going on in this court right now. Freeman went, during the trial of Wyatt, to the home of Mrs. Godfrey and demanded a settlement for his wrongful imprisonment. . . . *Now, is there not reason to fear that this depraved criminal may have caught from the theories*

broached on Wyatt's trial, and from the result, an impression that he could commit this crime with impunity?"

Seward tightened his fist on his table.

Then, Van Buren, with all the power in his voice: "FAR BE IT FROM ME TO SUGGEST THAT THE DISTINGUISHED COUNSEL OR WITNESSES ON THAT OCCASION EVER IMAGINED OR CONTEMPLATED SUCH A FRIGHTFUL CONSEQUENCE. BUT IS IT BEYOND THE RANGE OF POSSIBILITIES?

"And, whether true or not, is it not the imperative duty of those charged in any way with the faithful execution of the laws, to remember that the audience who throng a criminal courtroom, are not exclusively composed of the upright, the intelligent, or the humane, *and when theories are advanced in such a presence, which strike at the root of law and order, and furnish a perfect license for crime, by rendering its detection impossible, to sift them thoroughly, and if as unsound as they are dangerous, to condemn them publicly and boldly?*

"It needed not the fearful conjectures as to the origin of this crime, to induce courts, juries and public prosecutors, by every just means, to extinguish sparks which threaten such widespread conflagrations."

Van Buren reached his concluding remarks: "If crimes of this magnitude are to go unpunished, *and thus to invite imitation,* it is your hearthstones, not mine, that may be drenched in blood!"

He tossed a final bouquet to the judge and the jurors:

"Elsewhere, the murderer may go at large as a somnambulist, an insane man, or a justifiable homicide. But in New York, thus far, the steady good sense and integrity of our juries, and the enlightened wisdom of our judges, have saved our jurisprudence from ridicule, and firmly upheld law and order.

"Thus may it ever be; and I feel entire confidence, notwithstanding the extraordinary appeals that have been made to you in this case, that your verdict will be in keeping with the high character our tribunals have thus acquired, and will prove that the jurors of Cayuga County fully equal their fellow citizens of other counties, in intelligence to perceive, and independence to declare the guilt of a criminal."

CHAPTER FORTY-ONE

"Be Prepared. . . ."

Judge Whiting's charge to the jury was not a long address, but he told the jurors that the fundamental fact for them to remember was that the law was actually very simple:

If the prisoner knew right from wrong when he committed the murders on March twelfth, he was guilty. If he was diseased and did not know right from wrong, he must be acquitted. The prisoner must then have had intelligence enough to know that the act he was about to commit was wrong; he must have memory so as to know that he would be subject to punishment; and reason and will to be able to judge of his act and its consequences.

The judge was impressed with the complexity of the case and he remarked, "The evidence bearing on the issue of insanity is derived from sixty-five witnesses, seventeen of whom, including nine physicians, testify that, in their opinion, the prisoner was insane when the murder was committed; and the residue of them, including eight physicians, testify that the prisoner was sane."

Nobody knows just what happened in that jury room, but no one ever said that anything unusual did happen or could happen. The jurors were out too short a time. Only an hour.

Did they immediately take a vote, and did they at once, altogether, decide that Freeman was sane and guilty? Had they voted orally, by raised hand or by ballot? Did anyone in that party have

to convince anyone else? Had anyone held out? Nobody knows, but nobody ever said that anybody dissented even slightly.

There was one report that did get abroad—that the jurymen, the moment they were by themselves, all nodded their heads, a swift silent assent; but they decided that it wouldn't look too well if they returned with their verdict at once, and it was better to wait an hour or so.

The twelve good men and true, including three who were abolitionists, or were understood to have had abolitionist sympathies, sent one of the constables who had watched them, to the judge's chambers, to notify him they had reached a verdict.

Judge Whiting and his four associates filed back to their high seats in the dock. Villagers who hung about in front of the court came inside. The court came to order, and the judge formally asked the re-seated jurors, had they reached a verdict?

Andrew Preston, the foreman, stood and said, "We have, Your Honor. *We find the prisoner at the bar guilty of the crime wherewith he stands charged in the indictment.*"

It was near the supper hour, and the judge, talking mostly to the spectators, announced, "Court will convene tomorrow morning at half past six o'clock, for sentencing of the prisoner"—there was a knock of hard wood on the high bench—"until which time the court will stand adjourned."

. . . The redhead had lost.

They would have risen early anyway, these farmers and townsmen, for in that time the work day was long and the clock was the rooster; but on the morning of July twenty-fourth, when the sun swept out the night's clouds, the especially interested part of the village had gathered once more about the courthouse. They were impatient, coarse, filled with sneers of victory. As many as could wedged into the court, and other hundreds stayed outside, in the rising sun, to hear whatever could be heard of the ritual inside.

They made a grumbling aisle as Seward walked along Genesee Street and turned into the front of the courthouse. With him was Fanny, and they were arm in arm, expressionless, as they entered the court. Seward went forward into the dock, and Fanny took a seat down front, as one or two villagers yielded with alacrity to

her presence, even though they came to hear Freeman sentenced and to see the Sewards embarrassed.

One by one the judges entered through their door behind the bench and they quietly took their seats. Then there was a sound of chains at the entrance to the dock. Sheriff Pettibone and his aides had Freeman between them. They were heavily armed, and they had their hands sternly about Freeman's arms as they led him before the bench.

"Bring him closer," Judge Whiting ordered.

Freeman was pressed close to the judge's bench, so that he stood no more than a yard away and somewhat below the judge.

The judge leaned over and looked downward at the prisoner. Glancing first about the court, then hawking a bit, and seeing that all was tensely quiet, he undertook to tell Freeman that he had been found guilty.

"Look up at the judge," Sheriff Pettibone ordered, speaking loudly into Freeman's partially alive ear. Freeman seemed faintly to grasp what he was expected to do. After a momentary frenetic glance about, at the robed gentlemen, the jailers, and the fearsome "Governor," he stared vacantly at the judge. The benign smile settled upon his face, as Seward predicted it would.

"The jury say you are guilty. Do you hear me?"

"Yes," replied Freeman, and there was a jangling about his ankles.

"The jury," repeated the judge, "say you are guilty. *Do you understand?*"

"No," said the colored man.

"Do you know who the jurymen are?" The judge looked at the twelve stone-faced men in their block.

"No."

"*Well, they are those gentlemen down there*—" the judge went on, pointing to the men in their seats, "and they say you are guilty. *Do you understand?*"

"Ha?" It came out tortured, meaningless.

"*They say you killed Van Nest*——*!*" The judge was shouting. "Do you understand that?"

"Yes."

"Did you kill Van Nest?"

"Yes."

One of the judge's hands gripped the bench, the other held tightly the gavel.

"Do you have anything to say why I should not sentence you——?"

"No."

"You have nothing to say——?"

"Yes."

"What is it——?"

"Ha?"

". . . *I am going to sentence you to be hanged. Do you understand that?*"

"No-o-o."

Judge Whiting quit the usual formality of judges everywhere in the world when sentencing a murderer to his death—that of addressing the defendant. He talked straight out to the spectators, to his village, to the Auburnians who understood what Freeman had no understanding of.

He talked in the third person, not *to* Freeman, but *of* him, as if explaining to society why this court and this community were about to take his life.

It was not a long sentence of death, only long enough to divert this early morning crowd, and to inform those on the outside that a ceremony worthy of the occasion was in process, on the inside. It was not done quickly, but it was done . . . the judge first reviewing how, when Freeman was originally arraigned, Seward placed in his behalf the plea of insanity; then Freeman's life was briefly capitulated, and how, finally, he had applied to the magistrates for redress, and this failing, "he appears to have reasoned himself into a belief that the laws of the country afforded him no protection against oppression and injustice. . . ."

Then had come the murders, ". . . and after twenty-four men on two trials had said upon oath he is sane, it is to be hoped that those who have heretofore doubted it, will yield to an opinion thus carefully formed and solemnly expressed. . . .

"This degraded and ignorant felon, who has consummated his wickedness by these atrocious murders, has had the benefit of two verdicts; and let it not be said that the administration of justice

is partial or prejudiced by reason of his color, his social degradation or his monstrous crimes . . . the result will reflect honor upon the institutions and laws of the country. . . .

"But the lessons to be drawn from this tragic event are many. The most impressive one is, that there is a duty upon society to see to the moral cultivation of the colored youth, now being educated for good or evil in the midst of us. This is so obvious that it needs no comment. . . ."

He looked up from his notes, and he made this point:

"The rule by which a man must be judged, is whether he had knowledge of right or wrong in regard to the act for which he is on trial. If he had, he is responsible, and is neither an idiot nor an insane man. By that rule the prisoner has been tried and convicted. *And whatever theories learned men may create, there is no other which can safely be introduced into a court of justice.*"

So spoke a judge on that early morning against the efforts of men who would try to understand the nature of men.

Judge Whiting trusted that in the term of life remaining to Freeman, "he would receive the care and instruction of good men, to enlighten his darkened mind to a true sense of his condition, and to prepare him for the change that awaits him."

THE JUDGMENT OF THE LAW IS, THAT THE PRISONER AT THE BAR, WILLIAM FREEMAN, BE TAKEN FROM THIS PLACE TO THE PLACE FROM WHENCE HE CAME, THERE TO REMAIN UNTIL FRIDAY, THE EIGHTEENTH OF SEPTEMBER NEXT, AND THAT ON THAT DAY, BETWEEN THE HOURS OF ONE AND FOUR IN THE AFTERNOON, HE BE TAKEN FROM THENCE TO THE PLACE OF EXECUTION APPOINTED BY LAW, AND THERE HUNG BY THE NECK UNTIL HE SHALL BE DEAD.

CHAPTER FORTY-TWO

". . . For the Unexpected"

The hot August sun poured its rays down on the village.

The trial was done, Freeman waiting to be hanged, and Seward sat at his table in the grape arbor at the south end of his property. The big rambling grape leaves, like elephant ears, arced over his head, and he sat in their shade thinking of the terrible loss he had sustained. For days the echoes of the trial testimony ricocheted in his skull . . . just raise the grit on my head a little, that's all . . . Christ in his throat, choking him . . . Australia, Australia . . . Want your bones, Bill, want your bones . . . Hang Wyatt, hang Wyatt. . . . Far be it from me to suggest that the distinguished counsel. . . .

The twists, and inanities and absurdities flowed in his brain. . . . Do you know who the jury are? . . . Do you hear? Do you hear? . . . Christ came to Sunday school. . . . He wept? Are you sure? . . . Why I never thought he stole the horse . . . never thought . . . never thought. . . . Then he went north, then he looked in the window, then he went north. . . . Why, Mr. Curtis, I didn't kill no baby . . . sufficiently sane . . . sufficiently. . . . Not that much acquainted with bumpology . . . sorry, bumpology. . . .

He wrote to his confidant, Weed:

> For the first time in two months I lay aside the papers in my murder trials, and look out upon the world, behind, around and before me. I rise from these fruitless

> labors, exhausted in mind and in body, covered with public reproach, stunned with protests. It remains to be seen whether I shall be able to retrieve any of these losses. If I know the line of persona, or that of professional duty, I have adhered to it faithfully and unflinchingly.

Always the old theme of *faith*, Seward the man of faith examining himself and his works; and what he could do, he did in the next few days.

He wrote to Governor Silas Wright and he applied for a stay of execution for Freeman; he wrote to the Supreme Court too, and he asked that court for a stay.

Remaining about his house and property, recovering strength from the Daedalian ordeal, Seward drifted for days in a routine designed to revive himself. His baby daughter, Frances, was now three. Her last six months of growth had turned her into a lovable and garrulous child and Seward passed hours with her, in the arbor, about the hothouse, and in the recesses of the garden and grove. There were family excursions to Skaneateles, Aurora, Elbridge, pretty villages within ten or twelve miles. Seward and Fanny and the younger children went by carriage to friends at these places, stayed a few hours, returned at night. There were boating and fishing on Owasco; sometimes at night Seward played a rubber of whist; and a friend or two dropped in, Blatchford or Wright.

Within a few weeks he recouped vitality. He read the papers, wrote more letters, and studied again the national political scene, until it took on clear outlines. He went over the records of the Freeman trial and he prepared a bill of twenty-seven exceptions to present to the higher court.

The villagers tried to resume their customary avocations, but it was not easy. Insanity! Murder! Freeman-Seward! The tragedy was still everywhere, in the village, a mystic something in their midst not yet resolved; and many hated the sight of Auburn Prison, gray and haunted in their lives; and some plunged into church bazaars for forgetfulness, went visiting, organized dances, or cider and doughnut parties—and tried not to think that Wyatt and Freeman were to be hanged.

The young ones took the long hike over Capitol Hill, out Franklin Street, named for Benjamin Franklin, to the forest known as Chestnut Ridge. In the woods of tall chestnut trees, with the carpets of brown fallen leaves around each trunk, the squirrels abounded, and the villagers shook the trunks so as to knock down the chestnuts, and the squirrels got their share and hid them for the winter, and the villagers took theirs back home and roasted them.

The Martha Washington Society, that had been organized ten years earlier to help suffering families of alcoholic fathers, resumed their meetings. . . . The Auburn Literary Association debated again the popular topics of the day—man's destiny, anatomy, the arts, religion, capital punishment, witchcraft, the power of Great Britain, law, education. . . . And for three days the State Fair was held in Auburn, thirty thousand people coming there from all parts of the state. The railroads were burdened; the country roads were filled with wagons; and the festive air on the big broad site, on top of Capitol Hill, in the east end of the village, for a few days lifted the moody air from the town.

Yet on August eighteenth, they hanged Henry Wyatt, and the whole case zoomed freshly once more. Captain Russell's military corps guarded the jail while they executed Wyatt.

They had erected a gallows in the jail, near Wyatt's cell, and there were a dozen witnesses, besides a few village officials. Wyatt fainted, then recovered. They sat him in a chair and he swooned again. He had tried to commit suicide three nights before by cutting his wrists, but a jailer found him bleeding. He was weakened now, and while the sheriff adjusted the rope, he said, "Mr. Sheriff, I want to say a few words before I die. I have seen much and experienced much in this world, but it will soon be over. . . . I never killed a man in Ohio, and now I say so on the word of a dying man . . . I hope the community will not censure my counsel. Mr. Seward has done all he could for me. I have lived like a man, and I shall die like a man. I hope all present and the community will have compassion and forgive me; but I am not afraid to die. . . . Mr. Sheriff, I wish you to place the rope so it will not give me pain. . . . It is not calculated to benefit a man to go to State Prison, and be treated as I have been. . . . I fare you all well."

In September the impresario, George J. Mastin, came to the village with his "Unparallelled Exhibition of Oil Paintings." The showman had fourteen paintings, five of American history, five Biblical scenes and four large murals of especial interest to the Auburnians, the "Scenes from the Massacre at Fleming."

Mastin lived in Sempronius, a village only a few miles from the Van Nest murders, and he may even have known the Van Nests. The painter he had commissioned to do the scenes had performed them with a powerful representational vigor. They were large oils, eight by ten feet each, done on bedticking, and Mastin was showing them nightly to large groups of paying customers who came to taverns, sheds, barns to see the exhibition.

The trouper had been travelling through many villagers during the past month showing the paintings, and presenting the rest of the show too: the Erin Twin Brothers, who did clog dancing, after which Mastin, a man of many talents, entertained his audiences with demonstrations of phrenology.

The performances were at night, by candle or lamplight, and the vague lighting flickered over the dramatic scenes from Freeman's life. One mural showed the entire Van Nest house, with Freeman in front, at the gate battling Mrs. Wyckoff; a second limned the doomed man standing at the bedside of infant George Van Nest, dagger in hand; the third portrayed Freeman peering into the window of the Van Nest house at the victims sprawled on the floor; and the fourth oil, premature, showed Freeman hanging, against a backdrop of jail bars and glee-faced villagers watching him suspended.

Hundreds flocked to this show nightly, and fed themselves again on the detail of it all, and even the jurors who had tried Freeman, and returned to their harvests to work extra hard for the time they lost, went to see Mastin's show; and while they viewed the murals in the ghastly yellow light, George Mastin himself played soft music on a violin.

One day early in October, William and Fanny Seward strolled over to the county jail to see Freeman.

They were shocked at what they beheld: Freeman was standing on the cold stone floor, in his bare feet. His jailers were indifferent to his need for a pair of shoes. The flesh had fallen away

from his rather broad shoulders; his arms were thin, and the skin limped on his bones.

Beside him there was a cot bedstead with nothing on it but some rude and worn sacking on which to lie, and a single, small, filthy blanket.

He seemed not to have a glimmering of awareness, and when Seward called to him, "Can you hear me, Freeman?" the man made no sound. He did not look at them, and it seemed to the Sewards that his memory might be gone.

The prisoner stared out of the small barred window high above him, knowing apparently that that was the light, but aware of little else. He was statuesque in the cell's twilight, his arms folded; but emaciation was upon him, and from time to time an eruptive cough tore up from his lungs and filled the cell.

Fanny was aghast at the sight; his desertion and loneliness, his standing while dying, the disease raging in him, and no longer any kind of look in his eyes, not even a living, waiting look.

The scene was so affecting to Fanny that tears swept from her eyes, and she turned away hurriedly and left the jailhouse before her husband.

Seward followed a minute later, and sadly they turned up South Street.

That evening Fanny wrote to her sister, "I pray God that he may be insensible to the inhumanity of his relentless keepers."

Seward's condition of professional and political defeat went on into the winter, for he was blamed by the Whigs in great part for the severe setback of his party in the November elections. If he hadn't defended the worst murderer in history and made folks think that Whigs were more radical than abolitionists . . . the Democrats wouldn't have swept into power everywhere in every village and county.

Later in the month of elections Seward argued a Bill of Exceptions, twenty-seven points, before State Supreme Court Justices Bronson, Beardsley and Jewett, in Rochester. Van Buren had come all the way from Albany to rebut Seward, and Luman Sherwood was also there, arguing the people's position.

Then came December and January, the case at its darkest

then; for there was only silence from the high court. They must wait, Seward and the prosecutors, and the villagers, and the people elsewhere in the state, for the results of the appeal. Freeman must wait. In their graves the Van Nests must wait forever.

In the winter the days are short and cold, and the ground is deeply snow-covered throughout the Finger Lakes Region, and this kind of winter came on. The villagers plodded on through another white season, the ice-cold air in their nostrils, hard and biting on Genesee Street, and the provincial winter entertainments in home and church.

So a year passed since the fateful morning when the clerk in Seward's office, Charles Parsons, handed Seward the note from Wyatt in Auburn Prison. . . .

Then, one morning in February . . . the eleventh . . . as Seward entered his office, Parsons came toward him again, this time with a light of faint hope in his eye. "It's from Rochester, Governor!" and he handed Seward the large white envelope.

The answer from the Supreme Court! Seward hurried to his desk, and Parsons stood by. Blatchford came in then, and they called him over, and Seward got the letter open and withdrew an extensive handwritten brief.

He glanced at the opening page, with the seal of the State Supreme Court at the top, and that page wasn't indicative. He turned swiftly to the last sheet, and he read the final words:

> Upon the whole case, therefore, I think the judgment of the court should be reversed, and a new trial ordered.
>
> JUDGMENT REVERSED.
>
> Justice J. Beardsley
> for the Supreme Court

There was a shout from the three men, and a slapping of backs. Then Seward plunged into the main matter of the brief so as to get the details of the victory.

CHAPTER FORTY-THREE

"Everything Must Have a Beginning . . ."

Though Judge Beardsley's decision favored Seward, principally because it granted time and a third trial to the defense, the judge did not pass on the question of Freeman's sanity.

There was much in the conduct of the case by the court and the prosecution that was wrong and unconstitutional and in violation of the acceptable juridical forms, Beardsley contended. The whole verdict of the preliminary trial was simply wrong, he said. Freeman was either sane or insane, and the preliminary jurors had come up with an awkward compromise decision that the prisoner was "sufficiently sane to be tried." That verdict was not a finding, Judge Beardsley asserted; it was defective.

Moreover, Judge Whiting had no right to rule that the evidence based on examinations of Freeman after July sixth could not be admitted. What this meant, said Beardsley, was that the county judge regarded Freeman as sane after July sixth! This was erroneous, the Supreme Court justice pointed out: if there was evidence of Freeman's insanity right up to the time of any witness being called to the stand, it was admissible because it might tend to fortify the conclusion that insanity existed in the preceding March.

"The evidence was shut out, as I understand the case," Judge Beardsley said, "because the evidence on the preliminary issue was supposed to constitute an insuperable bar to its reception."

Publication of the Supreme Court decision produced statewide repercussions in a variety of circles: the political, the legal and the

medical. Somehow, even in this tentative victory, the realization spread everywhere that Seward was winning this case, that it was some kind of historic victory, and rumor got about everywhere that Freeman might not live to face trial again.

The regional Democratic papers cautioned against any hurrying ahead with a new trial. "Everybody connected with this case is taking part in a Whig conspiracy. It's a move to build up Seward. The Whigs are trying to make a comeback over Freeman's dying body and this stroke of redheaded luck."

"Everything must have a beginning," Seward had often said, and perhaps no man who ever lived had a better opportunity to realize this than he had on the day he resumed law practice in Auburn, after four years of heading the State Government. He had himself nailed up on the door to his office in the Exchange Building the old tin sign that had been there years before, "Wm. H. Seward," and he had placed an item in the *Auburn Journal:* "NOTICE—The subscriber will attend to any business which may be confided to him in the courts of law and the Courts of Chancery."

He sat at his desk and read newspapers and waited for clients. None came in until the second day. Then a farmer walked in and said he wanted to bring suit against a man for five or ten dollars because his neighbor's "breachy oxen" had broken his fence. Seward looked at the man carefully and he thought of the thousands of dollars he owed. He wondered how many "breachy oxen" he'd have to handle per day to meet the staggering debt. Yet he had taken the case, and he made his beginning.

Now he must make a new beginning.

He wrote at once to Dr. Amariah Brigham: "Get me one hundred of the most intelligent physicians throughout the State of New York and abroad who may give evidence."

Let this army of physicians *now* examine Freeman in his cell . . . and see what would happen!

One day Seward invited Judge Bowen Whiting to walk with him to Freeman's cell. There was a legal formality before the prisoner could be tried again. They must get Freeman's recognizance: such a document would be one of the juridical steps before any new trial.

Sheriff Pettibone ushered the men to Freeman's cell and he said to the prisoner, "Here is the Governor and the Judge, Bill."

Freeman lay on his cot; he was imbecilic, and too ill to be able to stand; yet he knew men called to see him and that one was the "Governor."

Throughout the trial he had had no idea who the Governor was. In his disordered brain he had somehow associated his imprisonment and persecution with this man. If he ever wiped the smile off his face for anyone it was for Seward. It appeared that he showed dread and antipathy to the man who was defending him. He had had no conception that only Seward stood between him and the gallows. The title "Governor" loomed in his mind as a symbol of society.

They tried talking with him but he was incoherent. Once only he muttered a half-question—*could he—let out—been punish long enough.*

When Freeman muttered that, Judge Whiting suddenly exclaimed, "It's no use, Governor, you might as well try to get recognizance from a horse!"

The judge, at long last satisfied about Freeman's mental condition, told Seward there would be no more trials for Freeman.

The decision of the Superior Court—and the passage of a little time—had its effects on the Auburnians. They feared the good name of their town and many wondered whether they had erred. Had their understandable sympathy for the Van Nests, in combination with the "normal" prejudices of a white community moved them to a hysterical and passionate height which had best be somehow atoned?

In the privacy of their homes, in the churches, across cracker barrels, they were asking themselves deep questions.

Then it was that men tried to reason about what had happened —and to peer deeply into the act of Freeman. It had been a murder without motivation, without his knowing or caring who his victims were—and yet, could there not have been a subliminal motivation precisely because of that? Was it possible that, in mania, itself, the deepest motivation of man might, could—perhaps did—in this situation, assert itself? Had not his mania a certain tragic, horrible logic?

And these, who looked this deeply, whispered to one another that William Freeman may have striven with a madman's unconscious symbolism to create a sign and a token for men and for this village: that his mania was infused with so much passion and resentment, that he must rebuke injustice in the only way left to him —without realizing it—erecting a gonfalon in man's memory: that there might never again be such mistreatment of human flesh as he had been subject to since childhood. *Get my pay . . . You know there's no law for me . . . Do what's right.*

They believed that some such realization remained with him —long, long beyond the passing of his sanity: *get my pay, kill round awhile!*

Maybe that was why the fuse of a smile remained with him, even onto his death cot.

So some said, a religious uneasiness over them, as they probed in a metaphysical way to find the deepest underdepth of what had happened.

They knew that Bill Freeman was dying of tuberculosis. He lay in the jailhouse, ill since last winter, the cold stone floor too much for his weakened body.

Sick with the most mysterious disease of mankind—insanity —they had then punished him with exposure to tuberculosis. He would soon be as dead as his victims; he was wasting, faster than frost took the autumn leaves.

Had a community anywhere in the world ever cheated a man, from infancy to death, so completely?

One day—it was August twenty-first—the morning newspapers announced that Freeman had died in his cell.

A rare kind of unanimous impulse swept through the village.

Examine the man's body. Call in the men who knew how to look at the human brain—yes, the doctors, call them here again.

Solve the riddle of William Freeman!

And a very large number of citizens, none of whom had anything to do with the trial, demanded a post-mortem examination.

The telegraph brought Drs. Brigham and McCall to Auburn.

They arrived at night, twelve hours after the death of Freeman. The local doctors, fearful that there might be some important

change in the brain if the examination was too much delayed, removed Bill Freeman's brain and placed it on ice—until the doctors arrived.

The local doctors and the visiting specialists gathered in the office of Dr. Lansingh Briggs. The examination was at night by candlelight. The age of electricity was still a long ways away.

All of the physicians, but one, said that the brain "presented the appearance of chronic disease," and seven doctors signed a detailed statement describing the condition of the brain. Among the signers was Dr. Hyde, who had testified that Freeman was sane.

Dr. Brigham announced: "I have very rarely found so extensive disease of the brain in those who have died after long continued insanity, as we found in this instance; and I believe there are few cases of chronic insanity recorded in books, in which were noticed more evident marks of disease."

One local doctor, David Dimon, dissented. He saw all the signs of death by tuberculosis, but in his opinion no portion of the brain indicated "any decided marks of disease."

It didn't matter much that inexperienced Dr. Dimon bitter-ended it.

Dr. Brigham wrote an extensive account of his examination of Freeman's brain, which was widely published. He described, in medical terminology, the condition of the brain. He and his colleagues had weighed the brain, examined it inch by inch and made notations of the coloring, the hardness, the carious state, the inflammation and the congestion. "He died of disease of the lungs," Brigham wrote, "a disease of which a majority of the insane die; and his brain, on examination, exhibited those appearances of disease most generally found in those who have been long insane, though, in this case, to a greater extent than is usually seen."

Dr. Blanchard Fosgate, the Auburn surgeon, wrote a descriptive article for *American Journal of the Medical Sciences*. He ended his paper commending the case of William Freeman to "the careful consideration of the philosopher and the jurist." He said:

> How much the cause of justice and philosophy is indebted to the unwearied perseverance of the eminent advocate who withstood the tide of popular indignation in conducting the prisoner's defense, is left for other hands

to register; but true it is that over prejudice and error science has gloriously triumphed.

So ended an American tragedy: early in a man's life, early in the country's life, the unparallelled protest of William Freeman, who thought he would "kill round awhile."

Here were the true public beginnings of modern American psychiatry, Seward, in a decisive way, exploding the innocence of the field into the community view, stamping some estimable impact upon this whole realm.

It is probable that no more extensive and diversified exploration had ever been made, in history, on one man's mind than on the crucified Freeman under Seward's impetus. Probably no more that made sense and no more that was nonsensical had ever been said of anyone than was applied to Freeman.

Unthinkable as it may seem now, there was once a moment in the land when villagers, each, by saying, "He is sane," condemned an obvious maniac to death.

So, hysteria caught on, and became its own disease, and corrupted the religion in men.

Time healed the hatred of the villagers for their most illustrious citizen. They mourned the Van Nests, yet learned somehow to understand Freeman's tragedy . . . and their own.

There came at last to the little village the final violence, the violence of understanding. For understanding comes not easily and it is often a violent growth and a violent experience.

Out of the violence of injustice there may come morality; out of the anguish of insanity—truth; out of the turbulent human body, a quieted understanding; out of the horror of a thing done, a flowering peace; out of man's inequities, a final balance.

And in the village, they who had wanted Seward's life, and could have burned him and buried him in an unmarked grave, they who hated him, saw him once more as their teacher and their benefactor.

Their voices subdued; the bristle in their backs subsided; the animosity tamed; and they looked with a new awe and respect upon the man in their midst, the walking principle. The same majority that had wanted him defeated and dead now realized it

was not at all impossible that one day their great Seward might be an even more influential man than he was now.

Auburn was again the lovely village, deserted of violence and the old hates; quiet returned there and beauty ruled again. There were sad memories of a loved family obliterated, and a tragic young man lifted suddenly to some unique destiny, fought over by the law and by toddling science; but the eruption was settling now, like fine ash where there had been fire; and over the village came shame and, for the citizenry, a little better knowledge of themselves, and of the complication of living.

A softer spirit arrived even at Auburn Prison, and thereafter this place would become, for a century, a center for the study and the reform of penology.

Even to the waters of Owasco, quiet came again, and the lake lay, like a long tired arm, resting across the breasts of the hills.

L'envoi

Once more, the unexpected.

The twist and turn of event, the complication of experience, a *motif* that operated in the life of William H. Seward as inflexibly as his own circulatory system, again resumed its gyration.

Swiftly his prestige sprang back to the vitality it had before the Freeman case, and then, in an unexpected spiral, it became legendary.

His gifts "of intricate nature," his erudition and science, returned him to the leadership of the Whig Party; for, in a stroke, he had simultaneously elevated the sunken fortunes of the anti-slavery process, and besides, pioneered in the difficult realm of medical jurisprudence.

Only a few months earlier a minister's sermon, printed, had traveled over the country, and everyone knew that the capital punishment that it demanded for Freeman was intended also to help kill off the world of ideas represented by Seward. . . . But now another booklet went over the state, carrying his summary at the Freeman trial, and it was received everywhere as an example of legal and philosophic precedent.

The law took note of what the village lawyer had said of Freeman and of human experience; and literary men took note. Lawyers understood that from this time forward, Seward's defense of Freeman would be the precedent in cases of insane murder.

No man in public life is good all of the while, or great all

of the while, and rarely are any of them *sublime* at any moment in their lives; yet curiously there was a wide use of the word "sublime" in relation to Seward's performance at the time of his defense of Freeman.

The important statesmen of the period said that that hour, when Seward stood alone against his town and his time, was "a sublime hour." The United States Senator, Charles Francis Adams, called his act magnificent, and when the great British parliamentarian, Gladstone, read Seward's summary, he pronounced it "the finest forensic effort of the English language."

Somehow the effort at Auburn had, as a single deed, perhaps outshone Seward's total accomplishment as Governor; and so rapidly was his political status restored, after the death of Freeman and the post-mortem report of the medical men, that, two years later, the village lawyer was sent to the United States Senate.

From that forum he advocated the principles he had projected at Auburn, so that in the 1850s, thanks to him, reform spread rapidly in the area of mental hygiene.

On the Senate floor he pictured the universality of these matters, the mystic nature of the brain, man's puny gropings in the field of neurology, and Congressmen and Senators listened with sympathy. They supported his proposals for the allocation of large tracts of land in each state for the building of hospitals for the mentally hurt. Thereafter new hospitals were built, and there followed appropriations for the study of mental disease—initiated by him—and his efforts gave encouragement to young practitioners of the study of the mind and of the body in health and disease.

Everywhere that medicine was practiced the name of Seward was mentioned with warmth and hope. Doctors studied the records of the Freeman trial and they learned from the wide-ranging clashes between lawyers and witnesses, from the sense and the ignorance of the testimony, how much more needed to be known in this subtle field of medical and social relations.

It was this time, the 1850s, that might well be called the pre-psychiatric era of mental investigation in America, when the impetus in the field leaped forward as a consequence of Seward's bulwarking efforts in Government.

In those days the Senatorial term lasted six years. During his

first term in office Seward became the nation's great antislavery advocate; he spoke of the irrepressible conflict, and he tried to heighten men's feelings about the abolition of slavery. In 1855 there was a terrible fight over his second attempt for the Senate, and the Copperhead North sought to keep him out of Washington; but he was re-elected and he stayed in the Upper House and carried the antislavery banner until the Civil War.

When 1860 arrived and the entire nation expected Seward to receive the Republican nomination for President, once more, the unexpected came into the pattern of his life . . . his old philosophy asserting itself. He himself had predicted, early in his political career, that the West would one day be decisive in the political affairs of the land. And now the decisive West put Lincoln forward, and "the unexpected" occurred again: Lincoln, not Seward, became President.

But Seward went on to become possibly the nation's most outstanding Secretary of State. At least so said the cautious historian, Frederic Bancroft, later on; and this has been often said since. Seward became as he was called "the right arm" of Lincoln. In fact, one of the great stories of Seward's life is the strange one, how his greatness was compared with Lincoln's, in a long-running debate, after the Civil War. Yet these two, each with his special genius, passed through that great civil strife with Lincoln as leader, and Seward as supporter.

It is possible that Seward's purchase of Alaska was an act somehow on the same order as his defense of Freeman. That too was a recusant challenge to current sentiment, and a thrust into a future that was dark to others, but clear and visible to him. Freeman's defense was such a "folly" also.

The time came when assassination attempts were made on the same day upon Lincoln and upon Seward. Lincoln died, but though Seward was seriously injured, he lived on, to poignantly regret he had not died with Lincoln. He told Lincoln's law partner, Leonard Swett, "I have always felt that Providence dealt hardly with me in not letting me die with Mr. Lincoln. My work was done, and I think I deserved the reward of dying there. How much better to have died than to prolong my life, in the miserable business of patching up Johnson's cabinet."

The attempt on Seward's life was fatal to Mrs. Seward. Two months after Lewis Paine daggered her husband and seriously injured her son, Frederick Seward, she died in Washington, after having been Seward's companion for forty years.

They returned her body to Auburn and she was buried in Fort Hill Cemetery, a stone's throw from the Seward mansion on South Street—and another stone's throw from the courthouse where her husband had defended William Freeman two decades earlier. She, who had stood by the younger redhead in that earlier village fight, now preceded him to the grave.

And later, seven years later, in 1872, Seward was buried a few feet away from the earth of his wife.

By that time the principals in the Freeman case had all passed away. The judge and the victim and the prosecutor, they had all gone.

The passion and the excitement which agitated Auburn a generation before, that had passed away too.

The Civil War came and it passed and, with its passing, slavery in its horrible forms also passed; and Seward who had done so much to build the antislavery sentiment of his century, and pioneered in a rare medical area, was placed in his grave near Fanny, with a not very large headstone to mark his place.

Yet from that day until this, strangers have come to his grave, wanderers, visitors, respectful citizens, and it is possible that not a day had passed in the last eighty years, certainly not in the fair weather, but that someone has strewn flowers upon his grave.

They halt by his grave and they place there a flower, or a bouquet, or a wreath, made of the flowers that grow in Auburn, in the Seward Park and over the village. . . .

Crocus and hyacinth, rose and dahlia, the flowers that Seward loved and cultivated on his own grounds; the rambling flowers and the climbing ones, and as they place Seward's beloved polyanthus upon his grave, they look up at the marble inscription which, a generation earlier, at the conclusion of the Freeman trial, he had asked to be inscribed upon his humble stone; and they read the epitaph, and they remember how true it was, how very, very true. . . .

HE WAS FAITHFUL

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